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Wednesday
December 2, 1992

Briefing on How To Use the Federal Register
For information on a briefing in Albuquerque, NM, see
announcement on the inside cover of this issue.

DECEMBER 2, 1992



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THE FEDERAL REGISTER WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ALBUQUERQUE, NM

- WHEN:** December 8, at 9:00 am
- WHERE:** University of New Mexico
Continuing Education Bldg., Room 1
1634 University Blvd., NE
Albuquerque, NM
- RESERVATIONS:** Julie Stone
505-768-3532

Contents

Federal Register

Vol. 57, No. 232

Wednesday, December 2, 1992

Agriculture Department

See Federal Crop Insurance Corporation

See Forest Service

Civil Rights Commission

NOTICES

Meetings; State advisory committees:

Colorado, 57058

Montana, 57059

South Carolina, 57059

Coast Guard

RULES

Ports and waterways safety:

Upper Mississippi River, MO; safety zone, 56991

PROPOSED RULES

Drawbridge operations:

Virginia, 57039

NOTICES

Environmental statements; availability, etc.:

Parallel bridge project crossing Chesapeake Bay, VA, 57086

Commerce Department

See National Oceanic and Atmospheric Administration

See National Technical Information Service

NOTICES

Agency information collection activities under OMB review, 57059

Defense Department

NOTICES

DOD directives system annual index:

Change 3 availability, 57061, 57062

Federal Acquisition Regulation (FAR):

Agency information collection activities under OMB review, 57061

Energy Department

See Federal Energy Regulatory Commission

NOTICES

Natural gas exportation and importation:

Multi-Energies Inc., 57063

National Steel Corp., 57064

Santana Resources, Ltd., 57064

Tristar Gas Marketing Co., 57064

Environmental Protection Agency

PROPOSED RULES

Air quality implementation plans; approval and promulgation; various States:

California, 57045

Illinois, 57047

NOTICES

Meetings:

Local Government-Small Community Advisory Committee, 57064

Superfund; response and remedial actions, proposed settlements, etc.:

Sapp Battery Co. Site, FL, 57065

Water pollution control:

Chemical residues in fish; national study, 57064

Executive Office of the President

See Presidential Documents

Federal Communications Commission

RULES

Common carrier services:

Access provision for 800 service, 56998

Radio services, special:

Maritime services—

Data emissions on marine public correspondence channels in 156-162 MHz band; correction, 57000

Radio stations; table of assignments:

Colorado et al., 56999

PROPOSED RULES

Frequency allocations and radio treaty matters:

Satellite digital audio radio service allocation in 2310-2360 MHz band, 57049

Television stations; table of assignments:

California, 57051

NOTICES

Agency information collection activities under OMB review, 57065, 57066

Rulemaking proceedings; petitions filed, granted, denied, etc., 57066

Federal Crop Insurance Corporation

RULES

Crop insurance; various commodities:

Peanuts

Correction, 56963

Federal Energy Regulatory Commission

PROPOSED RULES

Natural Gas Policy Act:

Interstate pipelines—

Electronic bulletin boards; uniform standards, 57031

NOTICES

Applications, hearings, determinations, etc.:

Kentucky West Virginia Gas Co., 57062

Sunrise Energy Co., 57062

Transcontinental Gas Pipe Line Corp., 57063

Federal Highway Administration

RULES

State highway safety programs; school bus and pupil transportation guideline revisions, 56991

Federal Reserve System

RULES

Home mortgage disclosure (Regulation C):

Nondepository mortgage lenders; exemption standard, 56963

NOTICES

Meetings; Sunshine Act, 57089

Applications, hearings, determinations, etc.:

Jackson, Lyndon D., et al., 57067

NationsBank Corp. et al., 57067

Food and Drug Administration

NOTICES

Biological products:

Amino acids and related products safety; report availability, 57067

Food for human consumption:

Identity standards deviation; market testing permits—
Eggnog, light, 57068

Human drugs:

Prescription Drug Amendments of 1992; letter to
regulated industry and other interested persons;
availability, 57068

Forest Service**NOTICES**

Environmental statements; availability, etc.:
Deschutes National Forest, OR, 57057

General Services Administration**RULES**

Federal property management.
Public buildings and space—
Space assignment and utilization, 56994
Supplies and services for Government agencies;
payments, 56993

NOTICES

Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB
review, 57061

Health and Human Services Department

See Food and Drug Administration
See Health Care Financing Administration
See Indian Health Service
See National Institutes of Health
See Public Health Service
See Social Security Administration

Health Care Financing Administration**RULES**

Medicare and Medicaid:
Reporting and recordkeeping requirements and Federal
claims collection, 56996

NOTICES

Organization, functions, and authority delegations, 57069

Health Resources and Services Administration

See Public Health Service

Indian Health Service**NOTICES**

Grant and cooperative agreement awards:
Aberdeen Area Tribal Chairmen's Health Board, 57069
Personnel:
Indians in excepted service; review of qualification
standards plan, 57070

Interior Department

See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service**PROPOSED RULES**

Income taxes:
Arbitrage restrictions and rebate requirements—
Tax exempt bonds; hearing, 57033
Debt instruments modifications, 57034
Hearing, 57033

International Trade Commission**NOTICES**

Import investigations:

Bulk bags and process for making same, 57074
Cordage products from Costa Rica et al., 57074
Cutting tools for flexible plastic conduit and components,
57075
Ferrosilicon from—
China, 57076
Integrated circuit telecommunication chips and products
containing same, including dialing apparatus, 57077

Interstate Commerce Commission**NOTICES**

Railroad operation, acquisition, construction, etc..
Los Angeles County Transportation Commission, 57077

Labor Department

See Mine Safety and Health Administration; Occupational
Safety and Health Administration

Land Management Bureau**NOTICES**

Realty actions; sales, leases, etc.:
New Mexico, 57072
Utah, 57073

Mine Safety and Health Administration**NOTICES**

Belt entry air use to ventilate production (face) areas of
underground coal mines; advisory committee; final
report, 57078

National Aeronautics and Space Administration**NOTICES**

Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB
review, 57061

National Archives and Records Administration**PROPOSED RULES**

Records management:
Micrographic records management, 57042

National Highway Traffic Safety Administration**RULES**

Motor vehicle safety standards:
Rearview mirrors—
School bus pedestrian safety devices, convex cross
view mirrors, 57000
School bus emergency exits, 57020
State highway safety programs; school bus and pupil
transportation guideline revisions, 56991
NOTICES
Motor vehicle safety standards; exemption petitions, etc..
Center for Auto Safety, 57086

National Institutes of Health**NOTICES**

Patent licenses; nonexclusive, exclusive, or partially
exclusive:
Diatech, Inc., 57071

National Oceanic and Atmospheric Administration**PROPOSED RULES**

Endangered and threatened species:
Snake River sockeye salmon, etc.
Critical habitat designation, 57051

NOTICES

Meetings:
Chesapeake Bay National Estuarine Research Reserve,
VA; component sites consideration, 57059

National Park Service**NOTICES**

Environmental statements; availability, etc.:

Carlsbad Caverns National Park, NM, 57073

Native American human remains and associated funerary objects:

Lassen Volcanic National Park, CA, 57074

National Science Foundation**NOTICES**

Antarctic Conservation Act of 1978; permit applications, etc., 57079

Meetings:

Ocean Sciences Review Panel, 57079

National Technical Information Service**NOTICES**

Meetings:

Advisory Board, 57060

Nuclear Regulatory Commission**NOTICES**

Committees; establishment, renewal, termination, etc.:

Three Mile Island, Unit 2 Decontamination Advisory Panel, 57079

Environmental statements; availability, etc.:

GPU Nuclear Corp. et al., 57079

Meetings:

Nuclear Waste Advisory Committee, 57080

Applications, hearings, determinations, etc.:

North Atlantic Energy Service Corp., 57081

Northeast Nuclear Energy Co. et al.; correction, 57081

Nuclear Waste Technical Review Board**NOTICES**

Meetings, 57081

Occupational Safety and Health Administration**NOTICES**

State plans; standards approval, etc.:

Washington [Editorial Note: This document, appearing at page 56378 in the Federal Register of November 27, 1992, was listed incorrectly in that issue's Table of Contents.]

Personnel Management Office**NOTICES**

Meetings:

Federal Prevailing Rate Advisory Committee, 57082

Privacy Act:

Systems of records; correction [This document, appearing at page 56733 in the Federal Register of November 30, 1992, was inadvertently omitted from that issue's Table of Contents.]

Presidential Documents

administrative orders

Puerto Rico; alteration in Federal administration

(Memorandum of November 30, 1992), 57093

Public Health Service

See Food and Drug Administration

See Indian Health Service

See National Institutes of Health

RULES

Fellowships, internships, training:

National Health Service Corps scholarship and loan repayment programs, 56994

Railroad Retirement Board**NOTICES**

Agency information collection activities under OMB review, 57082

Resolution Trust Corporation**RULES**

Privacy Act; implementation, 56968

Saint Lawrence Seaway Development Corporation**NOTICES**

Meetings:

Advisory Board, 57087

Securities and Exchange Commission**RULES**

Securities:

Net capital rule; absolute minimum requirements for registered broker-dealers, 56963

PROPOSED RULES

Securities:

Net capital rule; base minimum requirements for registered broker-dealers, 57027

NOTICES

Meetings; Sunshine Act, 57089

Applications, hearings, determinations, etc.:

Latin America Investment Fund, Inc., et al., 57082

Transamerica Occidental Life Insurance Co. et al., 57084

Social Security Administration**NOTICES**

Social security; foreign insurance or pension system: Finland, 57072

Surface Mining Reclamation and Enforcement Office**PROPOSED RULES**

Permanent program and abandoned mine land reclamation plan submissions:

Indiana, 57039

Transportation Department

See Coast Guard

See Federal Highway Administration

See National Highway Traffic Safety Administration

See Saint Lawrence Seaway Development Corporation

Treasury Department

See Internal Revenue Service

NOTICES

Organization, functions, and authority delegations:

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement), 57087

Veterans Affairs Department**RULES**

Adjudication; pensions, compensation, dependency, etc.:

Procedural due process and appellate rights, 56992

Separate Parts In This Issue**Part II**

The President, 57093

Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board

Free Electronic Bulletin Board service for Public Law Numbers and the Federal Register Table of Contents is available on 202-275-1538 or 275-0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR**Administrative Orders:****Memorandums:**

July 25, 1961

(Rescinded by
Memorandum of
November 30,

1992).....57093

November 30, 1992.....57093

7 CFR

425.....56963

12 CFR

203.....56963

1680.....56968

17 CFR

240.....56973

17 CFR**Proposed Rules:**

240.....57027

18 CFR**Proposed Rules:**

284.....57031

23 CFR

1204.....56991

26 CFR**Proposed Rules:**1 (3 documents).....57033,
57034**30 CFR****Proposed Rules:**

914.....57039

33 CFR

165.....56991

Proposed Rules:

117.....57039

36 CFR**Proposed Rules:**

1222.....57042

1230.....57042

38 CFR

3.....56992

40 CFR**Proposed Rules:**52 (2 documents).....57045,
57047**41 CFR**

101-2.....56993

101-17.....56994

42 CFR

62.....56994

400.....56996

401.....56996

405.....56996

47 CFR

69.....56998

73.....56999

80.....57000

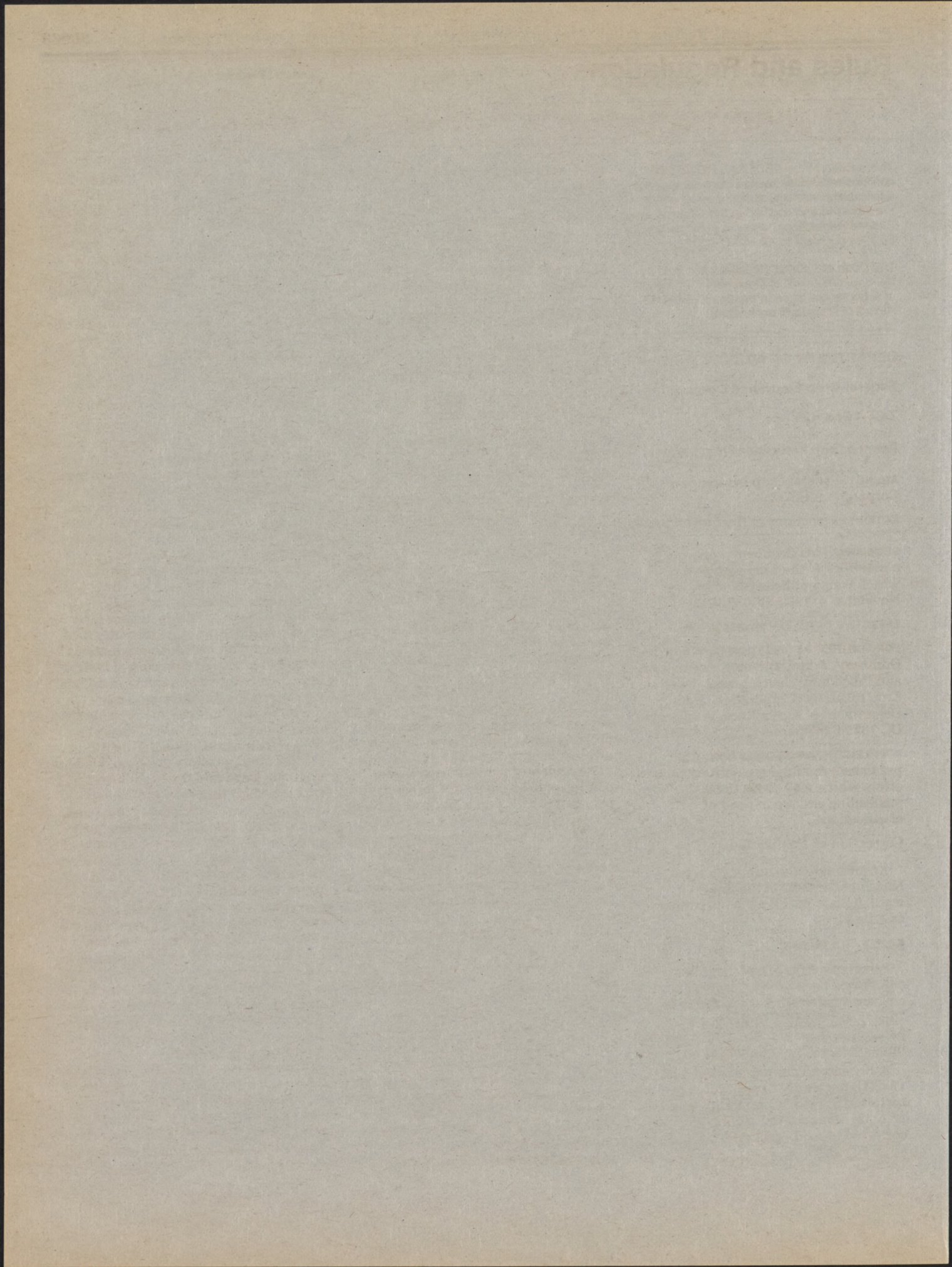
Proposed Rules:

2.....57049

73.....57051

49 CFR571 (2 documents).....57000,
57020**50 CFR****Proposed Rules:**

226.....57051



Rules and Regulations

Federal Register

Vol. 57, No. 232

Wednesday, December 2, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 425

Peanut Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Corrections to final regulations.

SUMMARY: This document contains corrections to the final regulations which were published Wednesday, November 4, 1992, (FR 52583).

EFFECTIVE DATE: December 2, 1992.

FOR FURTHER INFORMATION CONTACT: Mari Dunleavy, Acting Director, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254-8314.

SUPPLEMENTARY INFORMATION: As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication:

Accordingly, the publication on November 4, 1992 of the final regulations at 57 FR 52583 is corrected as follows:

§ 425.7 [Corrected]

Paragraph 9(f)(2)(i), of the first column on page 52588, "segregation I and segregation II" is corrected to read "Seg II and Seg III". In the same paragraph, the word "to" which appears immediately after "quality" is removed.

In the second column of page 52589, 17.c.(1), the word "Community" is corrected to read "Commodity", and in 17.n the reference to "section 8" is corrected to read "section 9".

* * * * *

Done in Washington, DC on November 25, 1992.

David L. Bracht,

Associate Manager, Federal Crop Insurance Corporation.

[FR Doc. 92-29170 Filed 12-1-92; 8:45 am]

BILLING CODE 3410-06-M

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Docket No. R-0771; Regulation C]

Home Mortgage Disclosure; Final Regulatory Amendments

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing a final rule amending Regulation C, which implements the Home Mortgage Disclosure Act. The Federal Deposit Insurance Corporation Improvement Act of 1991 authorized the Board, in consultation with the Department of Housing and Urban Development, to develop a new exemption standard for nondepository mortgage lenders that is comparable to the exemption for depository institutions. Under the standard that has been adopted by the Board, a nondepository mortgage lender with an office in a metropolitan area is covered if it meets either an asset-size test or a lending activity test.

A nondepository mortgage lender continues to be covered if its assets exceed \$10 million. Regardless of asset size, however, under the final rule a nondepository mortgage lender is also covered if it originated 100 or more home purchase loans (which includes refinancings of home purchase loans) in the preceding calendar year. This dual standard maintains coverage for all nondepository mortgage lenders that currently report under HMDA and extends coverage to firms that are active mortgage lenders despite their smaller asset size.

The Board also has revised the instructions for reporting loan applications received through a loan broker or correspondent to conform the rule for reporting loan approvals to the existing rule for reporting loan denials. This revision applies to all lenders covered by HMDA, not only nondepository mortgage lenders.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell or W. Kurt Schumacher, Staff Attorneys, or John C. Wood, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-2412 or (202) 452-3667. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

(1) Background

Exemption for Small Nondepository Mortgage Lenders

The Home Mortgage Disclosure Act (HMDA) requires lenders that have over \$10 million in assets and have offices in metropolitan areas to disclose their housing-related lending activity each year. Amendments to HMDA in 1989 extended its scope to cover independent mortgage lenders—nondepository lenders that are unaffiliated with depository institutions or holding companies. Under Regulation C, nondepository mortgage lenders have been subject to the act if the volume of their home purchase loan originations equals or exceeds 10 percent of their total loan origination volume in dollars. As a result, HMDA covers many nondepository mortgage lenders that make loans in metropolitan areas, but only if their assets exceed \$10 million.

Most nondepository mortgage lenders originate loans and then sell them within a short time, and their asset levels often can be relatively low (well under \$10 million). Because the 1989 amendments failed to cover as many of these lenders as Congress had intended, Congress amended HMDA again in 1991. The Federal Deposit Insurance Corporation Improvement Act of 1991 authorized the Board, in consultation with the Department of Housing and Urban Development, to establish a new small institution exemption standard for nondepository mortgage lenders in order to exempt those lenders that are "comparable within their respective industries" to depository institutions that are currently exempt.

In August 1992 the Board published a proposal that included an explicit measure of lending activity together with the existing asset-size test (57 FR 36024, August 12, 1992). The Board received about 40 comment letters on its proposal. After review of these

comments and upon further analysis, the Board has adopted a final rule.

The Board's proposal noted that nondepository mortgage lenders specialize in home loans, unlike most small depository institutions, which engage primarily in other types of retail lending. The data reported by depository institutions currently covered by HMDA indicate that small savings and loan associations (the depository institutions most like nondepository mortgage lenders in the type of lending they do) extended an average of 40 home loans in 1991. Because nondepository mortgage lenders focus on home purchase loans, however, the Board believes it is appropriate to base the exclusion for small nondepository institutions on a higher threshold of loan activity than the average loan volume for small depository institutions.

In its proposal the Board solicited comment on whether 100 home purchase loans is the appropriate level for the small-institution exemption applicable to nondepository mortgage lenders. Most commenters addressing this issue agreed with the proposed level, although a few believed that the exemption standard should be based on a smaller number of transactions to expand the act's coverage. Several commenters suggested that the transactions comprising the volume test also should be widened to include home improvement loans, refinancings of both home purchase and home improvement loans, and even applications for these types of loans.

In response to the comments and upon further analysis, the Board has determined that 100 loans is appropriate as the threshold for coverage of nondepository mortgage lenders, but the Board has broadened the standard by specifying that refinancings of home purchase loans are to be counted in determining whether a lender meets the loan volume test. The Board considered but decided against expanding the threshold to include home improvement loans and applications. The Board believes that keeping the focus on home purchase loans (including refinancings) for determining initial coverage is more consistent with other provisions of the act and regulation. For instance, besides having assets of more than \$10 million and having offices in metropolitan areas, a depository institution must have originated at least one first-lien, home purchase loan in the preceding calendar year to be covered by HMDA. Similarly, a nondepository institution's originations of home purchase loans must amount to 10 percent or more of its total loan originations, in dollars,

before the institution becomes subject to HMDA.

Under the final rule, for-profit nondepository mortgage lenders are covered regardless of lending volume if their assets (including those of any parent company) exceeded \$10 million at the end of the previous calendar year. In addition, firms that have assets of \$10 million or less are covered if they originated 100 or more home purchase loans (including refinancings of such loans) in the previous calendar year. This dual standard maintains coverage for all nondepository mortgage lenders that currently report under HMDA and extends coverage to firms that are active mortgage lenders despite their smaller asset size. The Board believes that this dual standard establishes a small-institution exemption for nondepository mortgage lenders comparable to the current exemption for depository institutions.

Applications Received Through Loan Brokers or Correspondents

Since 1990 the instructions to the HMDA Loan/Application Register (HMDA-LAR) have required that covered lenders report as loan originations only those loans that actually closed in the lender's name. But for applications received through loan brokers or correspondents, institutions reported data for all applications they denied, whether or not the loans would have closed in their name. If a loan closed in the name of a loan broker or correspondent and was immediately purchased by the institution, the institution reported the transaction as a loan purchase—even if it had made the initial credit decision approving the loan application prior to closing.

In August the Board proposed to conform the rule for reporting loan approvals to the rule for reporting loan denials. That is, a lender that preapproved a loan which then closed in another's name, and acquired the loan at or after closing, would report the loan as a loan origination rather than as a loan purchase. Most commenters agreed with the Board's position that this change would more accurately reflect an institution's overall credit decisions.

Under the final version of the revised instructions, if an institution receives an application through a loan broker or correspondent, approves it, and then by pre-arrangement with the broker or correspondent acquires the loan at closing or thereafter, that institution will report the loan as an origination, whether or not the loan closed in that institution's name. This change affects

all lenders covered by HMDA, not just nondepository mortgage lenders.

As has been the case since 1990, lenders will report denials of applications (and other actions taken besides originations, such as applications withdrawn) even if the same applications are denied by other institutions to which they are referred by a loan broker or correspondent.

Institutions that purchase a loan from another entity will continue to report the loan as a loan purchase, as long as they did not approve the corresponding application prior to loan origination. If an institution approves an application for a loan, but does not acquire the resulting loan (because it is sold to another lender, for example), the institution will report the loan as "approved but not accepted."

(2) Revisions

This section describes the changes that have been made to the regulatory provisions and the instructions.

Section 203.2 Definitions

(g) Home Purchase Loan

The Board had proposed, for purposes of defining coverage of lenders, to exclude refinancings from the definition of a home purchase loan. Some commenters noted that nondepository institutions might originate a significant number of home purchase refinancings yet could end up not being covered under the Board's proposed 100 home purchase loan test. Based on the comments and upon further analysis, the Board has adopted a rule that includes refinancings of home purchase loans in defining the threshold. Consequently, the Board did not adopt the proposed change to paragraph 203.2(g).

Section 203.3 Exempt Institutions

(a) Exemption Based on Location, Asset Size, or Number of Home Purchase Loans

The Board is adopting in final form its proposal that the exemption standard for nondepository mortgage lending institutions be based on asset size and number of home purchase loan originations. As discussed above, the Board has established 100 loans as the threshold for the coverage of nondepository mortgage lenders. However, the Board has broadened this standard by specifying that refinancings of home purchase loans are to be counted in determining whether a lender meets the loan volume test.

Thus, under the final rule a nondepository mortgage lender, like a depository institution, is covered if its

assets exceeded \$10 million at the end of the previous calendar year. Additionally, regardless of asset size, a nondepository mortgage lender is also covered if it originated 100 or more home purchase loans (which includes refinancings of home purchase loans) in the prior calendar year.

To better differentiate between the exemption criteria that apply to depository institutions and those that apply to nondepository mortgage lenders, § 203.3(a) sets forth the criteria for exemption in separate subparagraphs.

Appendix A to Part 203—Form and Instructions for Completion of HMDA Loan/Application Register

I. Who Must File a Report

The Board is amending Appendix A—Form and Instructions for Completion of HMDA Loan/Application Register—to reflect the new exemption standard for nondepository mortgage lenders. The criteria for these institutions are set forth in a separate paragraph to clearly distinguish this standard from the exemption criteria for depository institutions.

IV. Types of Loans and Applications Covered and Excluded by HMDA

The Board has revised the instructions in paragraph IV.A.3 and has added a new paragraph as IV.A.4 to reflect the requirements for reporting loan applications that are received through a loan broker or correspondent. As discussed above, the Board has conformed the rule for reporting loan approvals to the rule for reporting applications that did not result in originations—for example, loan denials and applications withdrawn. New language in paragraph IV.A.4 clarifies that a loan origination is only reported once.

V. Instructions for Completion of Loan/Application Register

Several commenters pointed out that under the previous rule, the category of the action taken was actually "application approved but not accepted by applicant" (emphasis added). Accordingly, the Board has revised this category—found in paragraph V.B.1. of the instructions—to read "application approved but not accepted." It has also revised the explanation in paragraph V.B.2.a. to make clear that this code applies when either the applicant or the broker or correspondent does not respond to a lender's deadline regarding an approved application.

Loan/Application Register Code Sheet

The Board has revised the Loan/Application Register Code Sheet to reflect the change to the category of the action taken code "application approved but not accepted" discussed above. A copy of the revised Code Sheet accompanies this final rule.

(3) Regulatory Flexibility Analysis

The Board's Division of Research and Statistics has prepared a Regulatory Flexibility Analysis of the revisions to Regulation C. A copy may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-3245.

List of Subjects in 12 CFR Part 203

Banks, banking, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

For the reasons set forth in this final rule and pursuant to the Board's authority under section 305(a) of the Home Mortgage Disclosure Act (12 U.S.C. 2804(a)), the Board amends Regulation C, Home Mortgage Disclosure (12 CFR part 203) as set forth below.

PART 203—HOME MORTGAGE DISCLOSURE

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801-2810.

2. Section 203.3 is amended by revising paragraph (a) and by revising paragraph (c)(1) to read as follows:

§ 203.3 Exempt Institutions.

(a) *Exemption based on location, asset size, or number of home purchase loans.* (1) A bank, savings association, or credit union is exempt from the requirements of this part for a given calendar year if on the preceding December 31:

- (i) The institution had neither a home office nor a branch office in an MSA; or
- (ii) The institution's total assets were \$10 million or less.

(2) A for-profit mortgage lending institution (other than a bank, savings association, or credit union) is exempt from the requirements of this part for a given calendar year if:

- (i) The institution had neither a home office nor a branch office in an MSA on the preceding December 31; or
- (ii) The institution's total assets combined with those of any parent corporation were \$10 million or less on the preceding December 31, and the institution originated fewer than 100 home purchase loans in the preceding calendar year.

* * * * *

(c) *Loss of exemption.* (1) An institution losing an exemption that was based on the criteria set forth in paragraph (a) of this section shall comply with this part beginning with the calendar year following the year in which it lost its exemption.

* * * * *

3. Appendix A to part 203 is amended by revising paragraphs I.A. through I.D., by revising paragraph IV.A.3, by redesignating paragraph IV.A.4 as IV.A.5 and republishing it, by adding a new paragraph IV.A.4, and by revising paragraphs V.B.1. and V.B.2.a. to read as follows:

Appendix A to Part 203—Form and Instructions for Completion of HMDA Loan/Application Register

* * * * *

I. Who Must File a Report

A. Depository Institutions

Subject to the exception discussed below, banks, savings associations, and credit unions must complete a register listing data about loan applications received, loans originated, and loans purchased if on the preceding December 31 an institution:

- 1. Had assets of more than \$10 million, and
- 2. Had a home or a branch office in a "metropolitan statistical area" or a "primary metropolitan statistical area" (both are referred to in these instructions by the term "MSA").

Example: If on December 31 you had a home or a branch office in an MSA and your assets exceeded \$10 million, you must complete a register that lists the home purchase and home improvement loans that you originate or purchase (and also lists applications that did not result in an origination) beginning January 1.

B. Depository Institutions—Exception

You need not complete a register—even if you meet the tests for asset size and location—if your institution is a bank, savings association, or credit union that made no first-lien home purchase loans (including refinancings) on one-to-four-family dwellings in the preceding calendar year. This exception does not apply in the case of nondepository institutions.

C. Other Lending Institutions

Subject to the exception discussed below, for-profit mortgage lending institutions (other than banks, savings associations, and credit unions) must complete a register listing data about loan applications received, loans originated, and loans purchased if the institution had a home or branch office in an MSA on the preceding December 31, and

- 1. Had assets of more than \$10 million (based on the combined assets of the institution and any parent corporation) on the preceding December 31, or
- 2. Originated 100 or more home purchase loans (including refinancings of such loans) during the preceding calendar year, regardless of asset size.

D. Other Lending Institutions—Exception

You need not complete a register—even if you meet the tests for location and asset size or number of home purchase loans—if your institution is a for-profit mortgage lender (other than a bank, savings association, or credit union) and home purchase loans that you originated in the preceding calendar year (including refinancings) came to less than 10 percent of your total loan origination volume, measured in dollars.

* * * * *

IV. Types of Loans and Applications Covered and Excluded by HMDA**A. Types of Loans and Applications to be Reported**

* * * * *

3. In the case of brokered loan applications or applications forwarded to you through a correspondent, report as originations loans that you approved and subsequently acquired according to a pre-closing arrangement (whether or not they closed in your institution's name). Additionally, report the data for all applications that did not result in originations—for example, applications that your institution denied or that the applicant withdrew during the calendar year covered by the report (whether or not they would

have closed in your institution's name). For all of these loans and applications, report the race or national origin, sex, and income information, unless your institution is a bank, savings association, or credit union with assets of \$30 million or less on the preceding December 31.

4. Originations are to be reported only once. If you are the loan broker or correspondent, do not report as originations loans that you forwarded to another lender for approval prior to closing, and that were approved and subsequently acquired by that lender (whether or not they closed in your name).

5. Report applications that were received in the previous calendar year but were acted upon during the calendar year covered by the current register.

* * * * *

V. Instructions for Completion of Loan/ Application Register

* * * * *

B. Action Taken

1. *Type of action.* Indicate the type of action taken on the application or loan by using one of the following codes. Do not report any loan application still pending at the end of the calendar year; you will report

that application on your register for the year in which final action is taken.

- 1—Loan originated
- 2—Application approved but not accepted
- 3—Application denied
- 4—Application withdrawn
- 5—File closed for incompleteness
- 6—Loan purchased by your institution

2. *Explanation of codes.* a. Use code 2 when an application is approved but the applicant (or a loan broker or correspondent) fails to respond to your notification of approval or your commitment letter within the specified time.

* * * * *

Appendix A [Amended]

4. The Loan/Application Register Code Sheet that appears at the end of appendix A is revised to read as follows:

BILLING CODE 6210-01-M

LOAN/APPLICATION REGISTER CODE SHEET

Use the following codes to complete the Loan/Application Register. The instructions to the HMDA-LAR explain the proper use of each code.

Application or Loan Information

Type:

- 1 -- Conventional (any loan other than FHA, VA or FmHA loans)
- 2 -- FHA-insured (Federal Housing Administration)
- 3 -- VA-guaranteed (Veterans Administration)
- 4 -- FmHA-insured (Farmers Home Administration)

Purpose:

- 1 -- Home purchase (one-to-four family)
- 2 -- Home improvement (one-to-four family)
- 3 -- Refinancing (home purchase or home improvement, one-to-four family)
- 4 -- Multifamily dwelling (home purchase, home improvement, and refinancings)

Owner-Occupancy:

- 1 -- Owner-occupied as a principal dwelling
- 2 -- Not owner-occupied
- 3 -- Not applicable

Action Taken:

- 1 -- Loan originated
- 2 -- Application approved but not accepted
- 3 -- Application denied by financial institution
- 4 -- Application withdrawn by applicant
- 5 -- File closed for incompleteness
- 6 -- Loan purchased by your institution

BILLING CODE 0210-01-C

Applicant Information

Race or National Origin:

- 1 -- American Indian or Alaskan Native
- 2 -- Asian or Pacific Islander
- 3 -- Black
- 4 -- Hispanic
- 5 -- White
- 6 -- Other
- 7 -- Information not provided by applicant in mail or telephone application
- 8 -- Not applicable

Sex:

- 1 -- Male
- 2 -- Female
- 3 -- Information not provided by applicant in mail or telephone application
- 4 -- Not applicable

Type of Purchaser

- 0 -- Loan was not originated or was not sold in calendar year covered by register
- 1 -- FNMA (Federal National Mortgage Association)
- 2 -- GNMA (Government National Mortgage Association)
- 3 -- FHLMC (Federal Home Loan Mortgage Corporation)
- 4 -- FmHA (Farmers Home Administration)
- 5 -- Commercial bank
- 6 -- Savings bank or savings association
- 7 -- Life insurance company
- 8 -- Affiliate institution
- 9 -- Other type of purchaser

Reasons for Denial (optional)

- 1 -- Debt-to-income ratio
- 2 -- Employment history
- 3 -- Credit history
- 4 -- Collateral
- 5 -- Insufficient cash (downpayment, closing costs)
- 6 -- Unverifiable information
- 7 -- Credit application incomplete
- 8 -- Mortgage insurance denied
- 9 -- Other

By order of the Board of Governors of the Federal Reserve System, November 24, 1992.
William W. Wiles,
Secretary of the Board.
 [FR Doc. 92-29088 Filed 12-1-92; 8:45 am]
 BILLING CODE 6210-01-M

RESOLUTION TRUST CORPORATION

Office of Inspector General

12 CFR Part 1680

Privacy Act Regulations

AGENCY: Resolution Trust Corporation.
ACTION: Final rule.

SUMMARY: The Resolution Trust Corporation (RTC or Corporation) Office of Inspector General (OIG) is adopting a final rule for the processing of requests for access to or amendment of records pursuant to the Privacy Act of 1974, 5 U.S.C. 552a (Privacy Act). Also, RTC OIG is exempting a system of records from certain provisions of the Privacy Act to the extent the system contains investigatory material pertaining to the enforcement of criminal laws or compiled for law enforcement purposes.
EFFECTIVE DATES: This final rule is effective December 2, 1992.

FOR FURTHER INFORMATION CONTACT: David W. Kuhnsman, Senior Assistant Counsel to the Inspector General, at 703-908-7812.

SUPPLEMENTARY INFORMATION:

Discussion of Final Rule

A. Background

This rule sets forth the procedures to be used in requesting records from RTC OIG, the procedures for contesting the content of records, and the identification of systems of records that are exempt from the access, amendment, and disclosure accounting provisions of the Privacy Act. Also, a Privacy Act system of records has been established. The system, entitled Office of Inspector General Investigative Files, contains investigatory material compiled for law enforcement purposes and investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. This system of records was published in the *Federal Register* on August 19, 1992 (57 FR 37581). A separate regulation implements the Privacy Act for non-OIG RTC systems of records.

The interim rulemaking with request for comments was published in the *Federal Register* on August 19, 1992 (57 FR 37400). No comments were received.

B. Requests for Information in Records

The rule provides that all written requests for records under the control of the Inspector General of RTC should be sent to the OIG in Rosslyn, Va. It further permits individuals to appear in person at OIG Headquarters, in Rosslyn, VA, to inspect non-exempt records pertaining to themselves which are covered by the Privacy Act. Requests for records must reasonably describe the record desired. The rule also provides for adequate identification to be submitted for both written and oral requests.

C. Initial and Final Decisions

The rule delegates to the Assistant Inspectors General and Regional Inspectors General for Audit, if the inquiry involves an audit issued in the Region, authority to make initial determinations concerning requests for access to or amendment of records. It should be noted that at the present time there are no audit systems of records subject to the Privacy Act, but regulatory provision is being made should the need for such a system arise in the future. The concurrence of the Secretary is required for initial determinations concerning requests for access to or amendment of records involving Corporation documents not developed by OIG but which are contained in OIG files. Final decisions on an appeal of an initial denial of access or a determination not to amend will be made by the Inspector General or Deputy Inspector General for records under the control of the OIG with the concurrence of the General Counsel with respect to Corporation documents not developed by OIG.

D. Exemption From Disclosure

RTC OIG is exempting the new OIG Investigative Files system of records from specified provisions of the Privacy Act. Subsection (j)(2) of the Privacy Act provides that an agency may promulgate rules to exempt any system of records within the agency from any part of section 552a except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i), provided that the system of records is maintained by "the agency or component thereof which performs as its principal function any activity pertaining to enforcement of criminal laws" and includes: "(A) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release and parole and probation status; (B)

information compiled for the purpose of a criminal investigation, including reports of informants and investigators and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision." Section 552a(k) of the Privacy Act provides that an agency may promulgate rules to exempt any system of records within the agency from sections 552a (c)(3), (d), (e)(1), (e)(4) (C) through (I), and (f) of the Act, pursuant to 5 U.S.C. 552a(k)(2), if the system of records is "investigatory material compiled for law enforcement purposes other than material within the scope of subsection (j)(2)," and also, pursuant to 5 U.S.C. 552a(k)(5), if the system of records consists of "investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, * * * Federal contracts, or access to classified information."

If a system of records is not exempted from these sections, the Privacy Act generally requires the agency to: Make an accounting of disclosures to the individual named in the record at their request; permit individuals access to their records; permit individuals to request amendment to their records; maintain only necessary or relevant information in its system of records; publish certain information in the *Federal Register*; and promulgate rules that establish procedures for notice and disclosure of records. The exemptions that may be asserted with respect to investigatory systems of records permit an agency to protect information when disclosure would interfere with the conduct of the agency's investigations.

Exemptions under subsections 552a (j)(2), (k)(2) and (k)(5) are necessary to maintain the integrity and confidentiality of the investigative files. Disclosure of information in these investigatory files or disclosure of the identity of confidential sources would seriously undermine the effectiveness of the Inspector General's investigations and put confidential sources at risk. Knowledge of such investigations also could enable suspects to take action to prevent detection of criminal activities, conceal or destroy evidence, or escape prosecution. Disclosure of this information could lead to intimidation of, or harm to, informants, witnesses, investigative personnel and their families. The imposition of certain restrictions on the manner in which information is collected, verified or retained could significantly impede the effectiveness of OIG investigations and

could preclude the apprehension and successful prosecution of persons engaged in fraud or criminal activity.

OIG Investigative Files will contain information of the type described in the (j)(2), (k)(2), and (k)(5) exemptions of the Privacy Act. The Inspector General Act, as amended, 5 U.S.C. App. 3, authorizes OIG to conduct investigations to detect fraud and abuse in the programs and operations of the Corporation and to assist in the prosecution of participants in such fraud or abuse. OIG will maintain information in this system of records pursuant to its law enforcement and criminal investigative functions, including background employment, personnel and contractor investigative material which may be necessary for OIG to maintain in order to carry out these functions. Further, the (j)(2), (k)(2), and (k)(5) exemptions will be narrowly applied.

E. Fees

The rule provides that copies of records will be provided at \$.20 per page. It also provides that fees may be waived if the total cost of complying with the request for records is less than \$25.00.

Regulatory Flexibility Act

The undersigned hereby certifies that the final regulations are not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 12 CFR Part 1680

Privacy Act.

For the reasons set out in the preamble, the Resolution Trust Corporation hereby amends part 1680 to title 12, chapter XVI of the Code of Federal Regulations to read as follows:

PART 1680—[AMENDED]

Subpart A—Freedom of Information Act Regulations

1. The authority citation for part 1680, subpart A, continues to read as follows:

Authority: 5 U.S.C. 552, 5 U.S.C. App.; 12 U.S.C. 1441(a)(b).

§§ 1680.1–1680.17 [Redesignated as subpart A]

2. The existing §§ 1680.1 through 1680.17 are redesignated as subpart A with the heading of subpart A added as set forth above.

3. Subpart B is added as follows:

Subpart B—Privacy Act Regulations

Sec.

1680.21 Purpose and scope.

1680.22 Definitions.

Sec.

1680.23 Procedures for requests pertaining to individual records in a system of records.

1680.24 Times, places and requirements for identification of individuals making requests.

1680.25 Disclosures of requested information to individuals.

1680.26 Special procedures for medical records.

1680.27 Requests for amendment of records.

1680.28 Agency reviews of requests for amendment of records.

1680.29 Appeals of adverse initial agency determinations of access or amendment of records and Statements of Disagreement.

1680.30 Preservation of records.

1680.31 Disclosures of a record to a person other than the individual to whom the record pertains.

1680.32 Fees.

1680.33 Penalties.

1680.34 Exemptions.

Subpart B—Privacy Act Regulations

Authority: 5 U.S.C. 552a, 5 U.S.C. App., 12 U.S.C. 1441a(b).

§ 1680.21 Purpose and scope.

This regulation sets forth the basic policies of the Resolution Trust Corporation (RTC) that implement the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) regarding the protection of the privacy of individuals on whom the Corporation's Office of Inspector General (OIG) maintains information which is retrieved by reference to an individual's name or an identifying particular assigned to the individual. This regulation also sets forth the procedures by which an individual may seek access under the Privacy Act to records pertaining to him/her, may request correction or amendment of such records, or may seek an accounting of disclosures of such records maintained by the Office of Inspector General.

§ 1680.22 Definitions.

For the purposes of this part:

(a) *Corporation* means the Resolution Trust Corporation.

(b) *Individual* means a natural person who is either a citizen of the United States of America or an alien lawfully admitted for permanent residence.

(c) *Maintain* includes maintain, collect, use, disseminate, or control.

(d) *Record* means any item, collection or grouping of information about an individual that is maintained by the Office of Inspector General and contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual.

(e) *System of records* means a group of any records under the control of the

Office of Inspector General from which information is retrieved by the name of the individual or some identifying number, symbol or other identifying particular assigned to the individual.

(f) *Designated system of records* means a system of records which has been listed and summarized in the **Federal Register** pursuant to the requirements of 5 U.S.C. 552a(e).

(g) *Routine use* means, with respect to disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was created.

(h) *Amend* and *amendment* mean any correction, addition to or deletion from a record.

(i) *System manager* means the agency official responsible for a designated system of records, as denominated in the **Federal Register** publication of "Systems of Records Maintained by the Resolution Trust Corporation."

(j) *Inspector General* means the Inspector General or Deputy Inspector General of the Resolution Trust Corporation.

(k) *Assistant Inspector General* means the Assistant Inspector General for Audit, Assistant Inspector General for Investigation, Assistant Inspector General for Policy, Planning and Resources, or Assistant Inspector General for Oversight and Quality Assurance.

§ 1680.23 Procedures for requests pertaining to individual records in a system of records.

Written requests by individuals for access to records pertaining to them and maintained within an Office of Inspector General's designated system of records should be signed by the requester and submitted in writing to the Office of Inspector General, Resolution Trust Corporation, International Place, 1735 North Lynn Street, Rosslyn, VA 22209. Each such request should contain a reasonable description of the record(s) sought, the system or systems in which such record may be contained, and any additional identifying information, as specified in the Corporation's **Federal Register** "Notice of Systems of Records" for that particular system, copies of which are available upon request from the Office of Inspector General and the FOIA/PA Branch, Office of the Secretary.

§ 1680.24 Times, places and requirements for identification of individuals making requests.

(a) Individuals may request access to records pertaining to themselves by submitting a written request by mail as provided in § 1680.23 of this subpart.

Before information is given or access to records is granted, the Office of Inspector General may require reasonable identification of the person making the request to ensure that information is given and records are disclosed only to the proper individual.

(b) Individuals submitting written requests seeking access to or amendment of records pertaining to themselves shall include copies of reasonable identification which contain the signatures of the individuals such as driver's licenses, employment identification cards or passports. The identification shall bear the individual's current residence or business address. Except for records that must be publicly disclosed pursuant to the Freedom of Information Act (5 U.S.C. 552), where the Office of Inspector General determines it to be necessary for the individual's protection, a certification of a duly commissioned notary public, of any state or territory, attesting to the requesting individual's identity may be required before a written request seeking access to or amendment of a record will be honored.

(c) Nothing in this section shall preclude the Office of Inspector General from requiring such other proof of identity as it deems satisfactory in the circumstances of a particular request for Office of Inspector General investigative files.

§ 1680.25 Disclosures of requested information to individuals.

(a) Except to the extent that records pertaining to an individual:

- (1) Are exempt from disclosure under § 1680.33 of this subpart, or
- (2) Were compiled in reasonable anticipation of a civil action or proceeding,

The Office of Inspector General will make such records available upon request for purposes of inspection and copying by the individual (after proper identity verification as provided in § 1680.24) and, upon the individual's request and written authorization, by another person of the individual's own choosing.

(b) The Assistant Inspector General or Regional Inspector General for Audit, where a request involves an audit issued in the region, for those systems of records under the control of the Office of Inspector General, will notify, in writing, the individual making a request, within ten business days following receipt of the request, whether any specified, designated system of records maintained by the Office of Inspector General contains a record pertaining to the individual. Where such a record does exist, the Assistant

Inspector General or if appropriate, Regional Inspector General for Audit, for those systems of records under the control of the Office of Inspector General, will inform the individual of the decision whether to grant or deny, in whole or in part, the request for access. The release of any Corporation documents not developed by OIG which are contained in OIG files requires the concurrence of the Secretary of the Corporation (or designee). In the event existing records are determined not to be disclosable, the notification will inform the individual of the reason(s) for which disclosure will not be made and will provide a description of the individual's right to appeal the denial, as more fully set forth in § 1680.28 of this subpart.

(c) Individuals will be granted access to records disclosable under this part 1680, subpart B as soon as is practicable. The Assistant Inspector General, or Regional Inspector General for Audit, if appropriate, for those systems of records under the control of the Office of Inspector General, will give written notification of a reasonable period within which individuals may inspect disclosable records pertaining to themselves at the headquarters of the Office of Inspector General, if appropriate, or the Region in which an audit was issued, during normal business hours. Alternatively, individuals granted access to records under this subpart may request that copies of such records be forwarded to them. Fees for copying such records will be assessed as provided in § 1680.31 of this subpart.

§ 1680.26 Special procedures for medical records.

Medical records shall be disclosed on request to individuals to whom they pertain, except, if in the judgment of the Corporation or the Office of Inspector General, depending on the manner by which the record was generated, the transmission of the medical information directly to the requesting individual could have an adverse affect upon such individual. In the event medical information is withheld from the requesting individual because of any possible adverse affect such information may have upon the individual, the Corporation or the Office of Inspector General shall transmit such information to a licensed medical doctor named by the requesting individual.

§ 1680.27 Requests for amendment of records.

The Office of Inspector General will maintain all records it uses in making any determination about any individual

with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination. An individual may request that the Inspector General amend any portion of a record pertaining to that individual which the Office of Inspector General maintains in a designated system of records. Such a request should be submitted in writing to the Office of Inspector General, Resolution Trust Corporation, International Place, 1735 North Lynn Street, Rosslyn, VA, 22209, and should contain the individual's reason for requesting the amendment and a description of the record (including the name of the appropriate designated system and category thereof) sufficient to enable the Inspector General to identify the particular record or portion thereof with respect to which amendment is sought. If an individual has a copy of the record he/she wishes to have amended, it should be attached to the request for amendment and the specific portion of the record sought to be amended should be clearly identified. The individual making the request may be required to provide the information specified in § 1680.24 of this subpart to permit verification of the identity of the individual making the request for amendment.

§ 1680.28 Agency reviews of requests for amendment of records.

(a) Requests by individuals for the amendment of records will be acknowledged by the Assistant Inspector General or Regional Inspector General for Audit, if appropriate, within ten business days following receipt of such requests. Promptly thereafter, the Assistant Inspector General or Regional Inspector General for Audit for records contained within a system of records under the control of the Office of Inspector General, will notify the individual of the decision to grant or deny the request to amend. The amendment of any Corporation documents not developed by OIG which are contained in OIG Files requires the concurrence of the Secretary of the Corporation (or designee). If the request to amend is granted, in whole or in part the Assistant Inspector General or Regional Inspector General for Audit will effect the appropriate amendment.

(b) If the Assistant Inspector General or Regional Inspector General for Audit for records contained within a system of records under the control of the Office of Inspector General, denies a request to amend a record, the notification of such denial shall contain the reason(s) for the denial and a description of the individual's right to appeal the denial as

more fully set forth in § 1680.29 of this subpart.

§ 1680.29 Appeals of adverse initial agency determinations of access or amendment of records and Statements of Disagreement.

(a) For records contained within a system of records under the control of the Office of Inspector General, the initial denial of an individual's request for access to or amendment of a record pertaining to him/her may be appealed in writing to the Inspector General, International Place, 1735 North Lynn Street, Rosslyn, VA, 22209, within 30 business days following receipt of notification of the denial. Such appeals should contain all the information specified for requests for access in § 1680.23 of this subpart or for initial requests to amend in § 1680.27 of this subpart, as well as any other additional information the individual deems relevant for the consideration by the Inspector General of the appeal. Both the envelope and the appeal letter should have written on them "Privacy Act Appeal." The appeal letter should also enclose a copy of the initial denial letter.

(b) The Inspector General will normally make a final determination with respect to an appeal made under this subpart within 30 business days following receipt of the appeal. The concurrence of the General Counsel of the Corporation (or designee) is required for Corporation documents not developed by OIG which are contained in OIG files. The Inspector General may extend the 30-day time period for good cause. When such an extension is required, the individual making the appeal will be notified of the reason for the extension and the expected date upon which a final decision will be given.

(c) If the Inspector General affirms the initial denial of a request for access or to amend, he or she will inform the individual affected by the decision, the reason(s) therefor, and the right of judicial review of the decision. With respect to a decision to sustain the initial refusal to amend a record the Inspector General will also inform the individual of the right to submit a "Statement of Disagreement" under paragraph (d) of this section.

(d) Upon receipt of a determination to affirm the initial denial of a request to amend records, the individual may submit to the Inspector General a concise statement ("Statement of Disagreement") setting forth his or her reasons for disagreeing with the Inspector General's determination not to amend. Such a "Statement of

Disagreement" will be attached to the record which was the subject of the request to amend. The Inspector General may, if deemed appropriate, prepare a concise statement ("Statement of Explanation") of the reason(s) why the requested amendment or correction was not made. Any Inspector General "Statement of Explanation" will be included in the system of records in the same manner as the "Statement of Disagreement." A copy of the "Statement of Explanation" and of the notation of the dispute as marked on the original record will be provided to the individual who requested correction or amendment of the record.

(e) When a record has been amended or corrected or when a "Statement of Disagreement" has been filed, the Inspector General will advise all prior recipients of the affected record whose identities may be determined pursuant to the disclosure accountings required by the Privacy Act (5 U.S.C. 552a(c)), or any other accounting previously made, of the amendment or correction or the filing of the "Statement of Disagreement." Any disclosure of disputed information occurring after a "Statement of Disagreement" has been filed will clearly identify the specific information disputed and be accompanied by a copy of the "Statement of Disagreement" and a copy of the "Statement of Explanation," if any, as set forth in paragraph (d) of this section.

§ 1680.30 Preservation of records.

The Inspector General will preserve all correspondence relating to the written requests it receives under this subpart and all records processed pursuant to such requests, in accordance with the records retention provisions of General Records Schedule 14, Informational Services Records, or General Records Schedule 22 for Office of Inspector General records. Under no circumstances will records be destroyed while they are subject to a pending request for access, amendment, appeal, or lawsuit pursuant to the Privacy Act.

§ 1680.31 Disclosures of a record to a person other than the individual to whom the record pertains.

(a) Except as provided in paragraph (b) of this section, the Inspector General will not disclose any record contained in a designated system of records to any person or agency except without the prior written consent of the individual to whom the record pertains.

(b) The restrictions on disclosure in paragraph (a) of this section do not apply to any disclosures:

(1) To those officers and employees of the Corporation who have a need for the record in the performance of their duties;

(2) Required under the Freedom of Information Act (5 U.S.C. 552);

(3) For a routine use listed with respect to a designated system of records;

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13 of the United States Code;

(5) To a recipient who has provided the Corporation with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States (or designee) to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Corporation specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of the individual to whom the record pertains;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) To the Comptroller General, or any of his/her authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) Pursuant to the order of a court of competent jurisdiction; or

(12) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

(c) Any "Statement of Disagreement" with the Inspector General's determination not to amend a record, filed with the Inspector General by an individual pursuant to § 1680.29(d) of

this subpart, will be included in the disclosure of the record under authority of paragraph (b) of this section. The Inspector General may, in his or her discretion, also include a copy of the Inspector General's "Statement of Explanation."

(d) The Inspector General, with respect to each system of records under his or her control shall:

(1) Except for disclosures made under paragraphs (b)(1) or (b)(2) of this section, keep an accurate accounting of—

(i) The date, nature, and purpose of each disclosure of a record to any person or to another agency made under paragraph (b) of this section; and

(ii) The name and address of the person or agency to whom the disclosure is made;

(2) Retain the accounting made under paragraph (d)(1) of this section for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

(3) Except for disclosures made under paragraph (b)(7) of this section, make the accounting made under paragraph (d)(1) of this subsection available to the individual named in the record at his/her request; and

(4) Inform any person or other agency about any correction or Statement of Dispute made by the agency in accordance with paragraph (b) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

§ 1680.32 Fees.

The Inspector General, upon a request for records disclosable pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), shall charge a fee of \$.20 per page for duplicating, except as follows:

(a) If the Inspector General determines that he or she can grant access to a record only by providing a copy of the record, no fee will be charged for providing the first copy of the record or any portion thereof;

(b) Whenever the aggregate fees computed under this section do not exceed \$25.00 for any one request, the fee will be deemed waived by the Inspector General.

§ 1680.33 Penalties.

Subsection (i)(3) of the Privacy Act of 1974 (5 U.S.C. 552a(i)(3)) imposes criminal penalties for obtaining Inspector General or Corporation records on individuals under false pretenses. The subsection provides as follows: "Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be

guilty of a misdemeanor and fined not more than \$5,000."

§ 1680.34 Exemptions.

These provisions authorize the Inspector General to exempt certain OIG Privacy Act systems of records from portions of the requirements of this regulation. For those OIG systems of records that are determined to be exempt, the system notice shall describe the exemption and the reasons. The Inspector General has determined that the following systems of records are exempt to the extent provided hereinafter.

(a) *Office of Inspector General Investigative Files*—(1) *Sections of the Act from which exempted.* (i) The Office of Inspector General Investigative Files system of records is exempt from all sections of the Privacy Act (5 U.S.C. 552a) except the following: (b) Relating to conditions of disclosure; (c) (1) and (2) relating to keeping and maintaining a disclosure accounting; (e)(4) (A) through (F) relating to publishing a system notice setting forth name, location, categories of individuals and records, routine uses, and policies regarding storage, retrievability, access controls, retention and disposal of the records; (e) (6), (7), (9), (10), and (11) relating to dissemination and maintenance of records, and (i) relating to criminal penalties. This system of records is also exempt from 12 CFR 1680.23 through 1680.28 and 1680.31(d) (3) and (4). This exemption applies to those records and information contained in the system of records pertaining to the enforcement of criminal laws.

(ii) To the extent that there may exist within this system of records investigative files compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Privacy Act, the Inspector General Investigative Case Files system of records is exempt from the following sections of the Privacy Act (5 U.S.C. 552(a)): (c)(3) relating to access to the disclosure accounting, (d) relating to access to records, (e)(1) relating to the type of information maintained in the records; (e)(4) (G), (H), and (I) relating to publishing the system notice information as to agency procedures for access and amendment and information as to the categories of sources or records, and (f) relating to developing agency rules for gaining access and making corrections. This system of records is also exempt from 12 CFR 1680.23 through 1680.28 and 1680.31(d)(3).

(2) *Reason for exemptions.* (i) The Office of Inspector General is an office of RTC a component of which performs,

as its principal function, activity pertaining to the enforcement of criminal laws, within the meaning of 5 U.S.C. 552a(j)(2). This exemption applies only to those records and information contained in the system of records pertaining to criminal investigations. This system of records is exempt for one or more of the following reasons:

(A) To prevent interference with law enforcement proceedings.

(B) To avoid unwarranted invasion of personal privacy, by disclosure of information about third parties, including other subjects of investigation, investigators, and witnesses.

(C) To protect the identity of Federal employees who furnish a complaint or information to OIG, consistent with section 7(b) of the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3.

(D) To protect the confidentiality of non-Federal employee sources of information.

(E) To assure access to sources of confidential information, including those contained in Federal, State, and local criminal law enforcement information systems.

(F) To prevent disclosure of law enforcement techniques and procedures.

(G) To avoid endangering the life or physical safety of confidential sources and law enforcement personnel.

(ii) Investigative records within this system of records which are compiled for law enforcement purposes, other than material within the scope of subsection (j)(2), are exempt under the provisions of 5 U.S.C. 552a(k)(2); *Provided, however,* That if any individual is denied any right, privilege, or benefit that they would otherwise be entitled by Federal law, or for which they would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. This system of records is exempt for one or more of the following reasons:

(A) To prevent interference with law enforcement proceedings.

(B) To protect investigatory material compiled for law enforcement purposes.

(C) To avoid unwarranted invasion of personal privacy, by disclosure of information about third parties, including other subjects of

investigation, law enforcement personnel, and sources of information.

(D) To fulfill commitments made to protect the confidentiality of sources.

(E) To protect the identity of Federal employees who furnish a complaint or information to OIG, consistent with section 7(b) of the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3.

(F) To assure access to sources of confidential information, including those contained in Federal, State, and local criminal law enforcement systems.

(G) To prevent disclosure of law enforcement techniques and procedures.

(H) To avoid endangering the life or physical safety of confidential sources and law enforcement personnel.

(iii) Records within this system of records comprised of investigatory material compiled solely for the purpose of determining suitability or eligibility for Federal civilian employment, Federal contractors, or access to classified information, are exempt under the provisions of 5 U.S.C. 552a(k)(5), but only to the extent that disclosure would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. This system of records is exempt for one or more of the following reasons:

(A) To fulfill commitments made to protect the confidentiality of sources.

(B) To assure access to sources of confidential information, including those contained in Federal, State, and local criminal law enforcement information systems.

Issued at Washington, DC, this 23rd of November 1992.

Office of Inspector General.

John J. Adair,

Inspector General, Resolution Trust Corporation.

[FR Doc. 92-29254 Filed 12-1-92; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-31511; File No. S7-28-89]

RIN 3235-AD79

Net Capital Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendments.

SUMMARY: The Securities and Exchange Commission is amending its net capital

rule under the Securities Exchange Act. The amendments will raise the absolute minimum net capital required of certain registered broker-dealers. Broker-dealers that hold customer funds or securities will be required to maintain at least \$250,000 in net capital. Those firms that clear customer transactions but do not hold customer funds or securities beyond the settlement of the transaction will be subject to a \$100,000 minimum net capital requirement. Broker-dealers that introduce customer accounts to other broker-dealers will be required to maintain \$50,000 or \$5,000 in minimum net capital, depending on whether or not they receive securities. Broker-dealers that make markets in certain securities will be required to maintain greater net capital in proportion to the number of securities in which they make markets. The maximum on this additional market maker minimum net capital requirement will be raised from \$100,000 to \$1,000,000. The minimum net capital requirement for certain mutual fund broker-dealers will be increased to \$25,000. The increases to the minimum capital levels will be implemented over a period of eighteen months. Additionally, the two methods of computing deductions for equity securities positions (or "haircuts") will be standardized. Finally, certain changes will be made to the computation of aggregate indebtedness.

EFFECTIVE DATES: For the amendments relating to equity securities haircuts (paragraph (c)(2)(vi)(J)), charges to aggregate indebtedness (paragraph (c)(1)), and the capital requirements for market makers (paragraph (a)(4)), except as to that provision raising the ultimate market maker capital requirement to \$1,000,000, which shall become effective on June 30, 1993, the effective date shall be January 1, 1993. For the amendments relating to minimum net capital requirements contained in paragraph (a), see the temporary phase-in schedule set forth in Appendix E to Rule 15c3-1.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, (202) 272-2904, Michael P. Jamroz, (202) 272-2372 or Roger G. Coffin, (202) 272-7375, Division of Market Regulation, 450 Fifth Street, NW., Washington, DC 20549.

TABLE OF CONTENTS:

I. Introduction

- A. The Commission's Proposal
- B. Brief Summary of Comments
- C. The Net Capital Rule

II. Rule Amendments—Minimum Net Capital Requirements

- A. Clearing Firms
 - (i) The Commission's Proposal and the Need for Increases
 - (ii) Industry Response

(iii) Impact of Increased Requirements

B. Dealers, Market Makers and Trading Firms

- (i) Dealers
- (ii) Over-the-Counter Market Makers

C. Introducing Firms

- (i) Introduction
- (ii) Need For Increases
- (iii) Interpretation of Introducing Accounts on a Fully Disclosed Basis
- (iv) Industry Response and Commission Action

D. Other Broker-Dealers

- (i) Mutual Fund Firms
- (ii) Best Efforts Underwriters
- (iii) Miscellaneous Brokers
- (iv) Further Proposals

E. Phase-In Schedule

III. Election of Alternative Standard

IV. Equity Securities Haircuts

- A. General
- B. Undue Concentration Charge
- C. Contractual Commitments

V. Aggregate Indebtedness

- A. Mutual Fund Payables
- B. Stock Loan Payables

VI. Technical Amendments

VII. Summary of Final Regulatory Flexibility Analysis

VIII. Statutory Analysis

IX. List of Subjects in 17 CFR Part 240

X. Text of the Proposed Amendments

SUPPLEMENTARY INFORMATION:

I. Introduction

A. The Commission's Proposal

On September 15, 1989, the Commission issued a release requesting comment on proposed increases to the minimum net capital requirements applicable to broker-dealers.¹ The Commission was concerned that the minimum net capital requirements, which in some cases dated back to 1972, were no longer adequate.

In that release, the Commission proposed increases in the minimum capital requirements for registered broker-dealers, based on the nature of the business of the firm, and the extent to which a broker-dealer has contact with customer funds or securities. Briefly, under the proposal, firms that carry customer accounts would be required to maintain at least \$250,000 in net capital. Broker-dealers that clear customer accounts in accordance with Securities Exchange Act Rule 15c3-3(k)(2)(i) (and therefore, although they may receive funds or securities, they may not hold them beyond the settlement of a transaction) would be required to maintain at least \$100,000 in net capital. Firms that introduce customer accounts to other broker-dealers would be required to maintain a

¹ Securities Exchange Act Release No. 27249 (September 15, 1989), 54 FR 40395 (October 2, 1989). All comments are available in File No. S7-28-89 at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

minimum net capital of \$100,000 or \$50,000, depending upon whether the firm routinely or occasionally receives customer funds or securities. Under the proposal, broker-dealers that never receive customer funds or securities would be allowed to maintain minimum net capital of \$5,000.

The minimum net capital required to be maintained by firms that make markets in securities also would be raised under the proposed amendments. Under the net capital rule, a market maker is required to maintain the greater of the base minimum net capital requirements referred to above or an amount of net capital determined by the number of securities in which the firms makes markets. The net capital rule currently draws a distinction in this regard based on the price of the security. Securities priced \$5 and below require capital of \$500 each, while securities priced above \$5 require capital of \$2,500 each. Under the proposal, the amount to be maintained for securities priced under \$5 per share would be raised to \$1,000 per security. The ceiling on this net capital requirement would have been raised to \$1,000,000, from the present \$100,000.

The proposed amendments also included provisions that would standardize the deductions under the rule for proprietary positions in equity securities. Currently, the applicable deduction (or "haircut") depends on the method the broker-dealer elects to compute its net capital requirement. Broker-dealers calculating their net capital under the basic method incur a different haircut charge than those computing haircuts on the alternative method, which generally results in lower haircut charges than the basic method.

Further, broker-dealers computing net capital under the basic method would realize reductions in aggregate indebtedness charges for liabilities associated with mutual fund and securities lending transactions. Finally, the Commission proposed that, for the purpose of calculating haircuts, stripped debt instruments be accorded the same treatment, for haircut purposes, as equity securities. The Commission's proposal will be discussed in greater detail in the appropriate sections of this release.

The Commission believes that the concerns articulated in the proposing release are valid, and is therefore adopting most of the proposed amendments. Certain changes to the original rule amendments have been made however, and these changes will necessitate the proposal of additional amendments to the net capital rule.

Therefore, the Commission is issuing two releases that relate to the minimum net capital standards applicable to broker-dealers. This release discusses the proposals that are being adopted by the Commission. In a separate release, the Commission is proposing for comment further amendments to the minimum net capital standards.

B. Brief Summary of Comments

The Commission received almost 275 letters in response to the proposed rule changes. Approximately 200 of the commentators objected generally to the proposed increases in minimum net capital requirements. Most of the commentators writing in protest against the increases objected to the proposed increases to the net capital requirements for introducing and mutual fund broker-dealers. Primarily, these firms feared that an increase in minimum net capital requirements would restrict entry into the securities business and force existing entities to close. A frequently voiced complaint was that the proposal discriminated against smaller firms in favor of larger enterprises without sufficient justification.

Self-regulatory organizations and other groups including the New York Stock Exchange ("NYSE"), the Securities Industry Association ("SIA"), the American Bar Association, the Chicago Bar Association, the Philadelphia Stock Exchange ("Phlx"), and the Midwest Stock Exchange generally supported the proposal. These commentators acknowledged the need to increase minimum net capital requirements and concurred with the general concerns set forth in the release proposing the amendments for comment. In particular, the National Association of Securities Dealers, Inc. ("NASD") expressed support for raising minimum net capital levels generally and made specific recommendations regarding the appropriate levels for introducing firms. The NASD's recommendation has, in large part, served as the framework for the requirements for introducing firms set forth in the releases being issued today.

Comments with respect to the increased net capital requirements for firms that carry and clear customer accounts were split; a number of commentators objected to the potential anti-competitive effects of the increases. However, others recognized the risks created by firms that hold customer funds and securities and acknowledged the need for regulatory action.

The Commission received mixed comments with respect to its proposal to increase the minimum capital requirements of firms that make markets

in over-the-counter securities. The NASD and the SIA supported the proposal; a number of broker-dealers criticized it, claiming that an increase in capital requirements would drive some market makers away from the over-the-counter securities market, reducing liquidity.

Firms that commented on the proposed new haircuts for zero-coupon and stripped securities opposed the measure on the ground that the proposed haircut was not reflective of the risks or volatility associated with stripped debt securities. In this regard, the Public Securities Association ("PSA") provided data on the volatility of stripped securities to be used in determining haircuts for these instruments. The proposals to standardize haircuts and alter the computation of aggregate indebtedness were generally supported by the commentators.

C. The Net Capital Rule

The Commission's net capital rule requires that every registered broker-dealer maintain a certain specified minimum level of net capital.² Rule 15c3-1 requires registered broker-dealers to maintain sufficient liquid assets to enable those firms that fall below the minimum net capital requirements to liquidate in an orderly fashion without the need for a formal proceeding.³ The rule prescribes required minimum levels based upon both the method the firm adopts in computing its net capital and the type of securities business it conducts. A firm engaging in a general securities business (which would include the ability to clear and carry customer accounts) calculating its net capital under the basic (or aggregate indebtedness method) must maintain a minimum net capital level of the greater of \$25,000 or 6⅔ percent of its liabilities (with certain exclusions). If the firm chooses the alternative method of computing its net capital (presently found in paragraph (f) of the rule), it must maintain net capital equal to the greater of \$100,000 or 2 percent of its customer-related receivables.

The current rule prescribes different minimum levels of net capital for firms based on categories of business activity. These levels were designed to address

² Generally, net capital, as defined by Rule 15c3-1, is a broker-dealer's net worth plus liabilities subordinated in accordance with Appendix D of the rule, minus assets "not readily convertible into cash" and certain percentages, or haircuts, of a firm's securities and commodities positions.

³ Self-liquidation of a securities firm in or approaching financial difficulty is specifically contemplated by section 5(a)(2) of the Securities Investor Protection Act of 1970 ("SIPA").

the risks perceived in the different types of businesses engaged in by broker-dealers. For example, if a broker-dealer carries no customer accounts and limits its business to certain specified activities, it needs to maintain only \$5,000 in net capital, rather than the \$25,000 that would otherwise be required under the basic method of computing net capital.⁴ One of the specified activities permitted is the introducing, on a fully disclosed basis, of customer accounts to another broker-dealer that clears and carries the accounts.

II. Rule Amendments—Minimum Net Capital Requirements

The following section of this release addresses, in greater detail, the Commission's amendments to the net capital rule concerning minimum net capital requirements.

A. Clearing Firms

(i) The Commission's Proposal and the Need for Increases

The Commission's proposal would raise the minimum net capital requirements of firms that clear customer accounts and hold customer funds and securities from \$25,000 (or \$100,000 for firms on the alternative method) to \$250,000. Because of the reduced risk, clearing firms that receive customer funds and securities but do not maintain custody of such assets beyond the settlement of a transaction (and are therefore exempt from the customer protection rule by virtue of paragraph (k)(2)(i)) would have a minimum net capital requirement of only \$100,000.⁵

The Commission believes it is appropriate to require the highest minimum level of net capital for broker-dealers that are entrusted with the money and securities of customers, who are, in most instances, incapable of assessing the financial condition of custodian firms. The required minimum net capital level for custodian firms should not be such that the slightest financial adversity will cause the collapse of the broker-dealer, an event that may cause delays and possible losses to customers and the Securities Investor Protection Corporation ("SIPC") fund.

⁴ See Securities Exchange Act Rule 15c3-1(a)(2); 17 CFR 240.15c3-1(a)(2).

⁵ Under paragraph (k)(2)(i) of Rule 15c3-3, a broker-dealer that does not carry margin accounts, promptly transmits all customer funds and securities to a carrying firm and effectuates all financial transactions with customers through a specially designated bank account is exempt from the possession and control and Reserve Formula requirements of the customer protection rule.

Several liquidations supervised by the NASD illustrate the potential dangers more dramatically. One firm held \$70 million of customer securities, although it maintained only \$61,000 of net capital. Another held \$8 million of customer securities against only \$42,000 in net capital. In both instances, the NASD became aware of financial difficulties in time to have the firms transfer the customer accounts to other broker-dealers, thereby avoiding SIPC liquidations.

During a self-liquidation, the expenses of a firm continue while its revenues drop significantly, often to zero. For example, employees of the firm being liquidated are retained in order to perform the services associated with transferring customer accounts to other firms. The salaries of these employees, along with the costs associated with maintaining the premises of the firm and transferring securities are borne out of the remaining capital of the firm. A self-liquidation can take from three weeks to several months, depending on the condition of the records of the broker-dealer and whether other broker-dealers willing to take the customer accounts can be readily located.

Self-liquidation costs incurred by the self-regulatory authorities are difficult to measure, because a large portion of the expenses are for non-incremental employee salaries, although for broker-dealers located outside the commuting distance of an NASD regional office, there could be substantial employee per diem and travel expenses. The staff of the NASD has advised the Commission that, on average, even the smallest self-liquidation requires two to three NASD employees on premises for a minimum of two weeks. By contrast, a recent large liquidation required approximately 25 NASD employees on premises for almost ten weeks.

Above the beyond accounting for costs, the Commission notes that customers of a firm undergoing a SIPC liquidation are usually unable to access their accounts during the liquidation. Aside from possible financial harm to customers, the delay in a liquidation causes considerable customer anxiety. Although every attempt is made to transfer the accounts of the insolvent broker-dealer to a healthy firm as quickly as possible, or to disburse the assets of the accounts directly to customers, delays can occur for many different reasons. A supervised self-liquidation can avoid the delays that might arise in the context of a court-imposed liquidation.

While requiring additional amounts of capital will not prevent firms from

failing, the additional capital serves as a fund from which the expenses associated with a liquidation can be paid. Moreover, the greater sum will act as a more reliable cushion against the use of SIPC money to liquidate a failed broker-dealer. In most instances, a \$250,000 minimum net capital requirement should prove to be a sufficient cushion for a reasonably conducted self-liquidation before a broker-dealer's insolvency. The self-regulatory organizations will be less hesitant to intervene and supervise a self-liquidation if there are thereby fewer questions concerning the liquidity of the firm's assets or if there is less of a threat by outside creditors to move against the broker-dealer. This is the most desirable situation for the customers of a firm that is no longer viable.

Other organizations have expressed concern about the minimum levels of net capital. The Commodity Futures Trading Commission ("CFTC") recently approved amendments to National Futures Association ("NFA") rules that increased the minimum net capital requirements of futures commission merchants from \$50,000 to \$250,000.⁶ The Options Clearing Corporation requires its new members to maintain \$1 million in net capital and other members to maintain \$750,000 in net capital.⁷ The National Securities Clearing Corporation requires its member broker-dealers to maintain \$50,000 in excess net capital over that required by Rule 15c3-1.⁸

(ii) Industry Response

Generally, the self-regulatory organizations, SIPC, and the SIA expressed approval of the higher requirements. Both the NYSE and the NASD specifically endorsed the proposal for clearing and carrying firms. However, approximately twenty-five broker-dealers expressed their opposition to the proposed \$250,000 requirement. Many of these firms are small to mid-size regional firms that carry customer accounts and clear their own securities transactions but do not clear the accounts of other broker-

⁶ See National Futures Association Amendments to NFA Financial Requirements Sections 1 and 6, January 25, 1990, (Nat'l Fut. Ass'n Man. (P-H) ¶¶ 7011 and 7041, NFA Financial Requirements sections 1 and 6. The NFA is a self-regulatory organization composed of futures commission merchants, commodity pool operators, commodity exchanges, banks and other organizations that is responsible for regulating the financial responsibility of its members.

⁷ See Options Clearing Corp. Guide (CCH) Rules 301(a) and 302(a).

⁸ See Nat'l Sec. Clearing Corp. Rules Addendum B ¶ 1.B.1.a.

dealers. Primarily, these firms feared that the proposal would drive them out of the securities business and therefore reduce competition. It should be noted, however, that even among this group of firms that objected to the proposed minimum, almost one-half stated that some increase in minimum net capital requirements is warranted. One firm candidly acknowledged that the current minimum of \$25,000 is far below what is needed to operate a securities business.

Other small broker-dealers opposed the increase and disagreed with the contention that clearing firms could avoid the increased costs associated with obtaining the capital necessary to comply with the amendments by opting to become introducing broker-dealers.⁹

(iii) Impact of Increased Requirements

It is clear that the recommended amendments will require some firms to raise additional capital. The firms that will need extra capital to comply are, the Commission believes, currently operating a securities business with an inappropriately, and in some instances dangerously, low level of net capital. While the Commission agrees with those commentators who point out that regional clearing firms provide important services to investors, the Commission also believes that undercapitalized firms endanger investors and undermine the consumer confidence upon which all firms rely. Investors who choose to leave their funds and securities with a regional self-clearing firm will be better served if that firm maintains an amount of net capital sufficient to ensure its continuity and stability in the industry.

⁹ Several commentators objected to the Commission's characterization of the risks created by clearing firms. These firms argued that the Commission should draw distinctions based on the manner in which clearing firms hold their customer securities in order to allow firms that hold customer securities in non-negotiable form to operate under reduced minimum. Presumably, this means that the broker-dealer would have no powers of attorney. The Commission does not believe that developing a minimum requirement containing such a distinction would be a practical solution. It would be virtually impossible to examine for compliance with this type of a requirement. If a clearing firm is holding hundreds of customer securities, examiners would have to inspect for powers of attorney for each customer. Furthermore, the essential risks inherent in allowing firms with little capital to hold securities would still be present under such a scheme. If it means that the broker-dealer would hold powers of attorney, the practical effect of this arrangement diminishes the distinction that the commentators would draw in the way securities are held at the firm. In the event of a SIPC liquidation, these securities are treated as part of the fungible bulk that is shared by all customers in a pro rata form (See SIPC Section 4), although SIPC would make every effort to return specific securities to customers.

In any event, the Commission's analysis of cost of capital data and the present net capital of clearing firms tends to refute the arguments of the commentators. Based on data received from the NASD reflecting financial information for firms designated to the NASD for examination ("NASD Data"), the approximate effect the increased requirements will have on the marketplace was calculated.¹⁰ Of the 458 NASD firms that clear customer accounts or hold customer property, 349 had net capital in excess of \$250,000. These firms had a total combined revenue of \$9.7 billion that represented 99 percent of the total revenue generated by all NASD clearing firms during the past year. Put another way, the rule amendments will affect 109 firms whose combined revenues of \$105 million represent about 1 percent of the total \$9.8 billion of clearing firm revenues. The Commission believes that this data demonstrates that the amendments will have a minimal effect on competition among clearing firms because, for the most part, investors already deal with well capitalized entities when making investment decisions.

The Commission recognizes that a precise estimate of the costs the recommended amendments would impose on clearing firms is difficult, if not impossible to calculate, especially considering the so-called "opportunity costs" involved in tying up additional resources in minimum net capital. Nonetheless, rough estimates based on the relative cost of capital demonstrate that the effect of the amendments should not be unduly harsh.

Typically, broker-dealers are organized as corporations or partnerships. In either instance, the individual or individuals who establish the firm can deposit into the entity money either as equity capital or subordinated debt that has been borrowed personally. These deposits are deemed to be the net capital of the broker-dealer, so long as the broker-dealer incurs no liability on the personal loan.

Once in the entity, the net capital of the broker-dealer may be invested in high-grade commercial paper, bank certificates of deposit or short-term government securities, all of which, as money market instruments, receive little or no haircut under the net capital rule. The Commission estimates the difference between the lending rate and the rate a broker-dealer could earn on

the above-mentioned instruments to be approximately three to four percent annually before taxes. Based on the NASD data, the analysis shows that 109 clearing firms would need, on average, an additional \$120,520 each to comply with the \$250,000 requirement. Using a four percent spread to determine the cost of capital, it would cost each of the 109 clearing firms on average approximately \$4,821 per year to comply with the new requirement. This is a small insurance premium to pay to protect the investing public and the SIPC fund.

Rather than raise additional capital, many of the self-clearing firms that would be unable to meet the \$250,000 net capital requirement would have another option available. These firms could lower their minimum required capital by conducting business in accordance with paragraph (k)(2)(i) of Rule 15c3-3, or by introducing their customer accounts to a clearing firm. All but 41 of the 109 NASD clearing firms that would not meet the \$250,000 requirement would meet the \$100,000 minimum capital requirement applicable to (k)(2)(i) firms. All but 12 of these firms would be able to meet the \$50,000 requirement applicable to introducing firms.

With respect to those firms that receive funds and securities, but do not hold them pursuant to paragraph (k)(2)(i) of Rule 15c3-3, the NASD data indicates that, at the end of 1991, 62 out of the 242 firms that conduct a general securities business and operate under that exemption would be unable to meet the \$100,000 standard. Those firms would need a total of \$2.7 million, or an average of \$43,000 per firm, to meet the new requirements. Further, in 1991, NASD firms conducting business under the paragraph (k)(2)(i) exemption produced revenues of \$3.1 billion. The 62 firms that would not be able to meet the new \$100,000 standard had \$24 million of revenues or .75 percent of the total amount. Thus, it does not appear that the \$100,000 standard will have a significant impact on competition among this class of clearing firms.

Several commentators disputed the Commission's cost of capital estimates. Others argued that a four percent spread was too low. The Commission recognizes that broker-dealers may incur economic costs other than the estimated four percent cost of capital. For example, if a principal of a broker-dealer borrows funds personally, he or she will likely be required to pledge personal assets as collateral for the loan. Additionally, there may be other inestimable opportunity costs associated with raising and using additional capital

¹⁰ None of the firms designated to the NYSE appear to have a problem meeting the new minimum requirements.

to comply with the amendments. However, even if the estimated cost of capital were eight percent, the average cost of capital for the 109 clearing firms that need to acquire extra capital would only be \$9,642 per year, before taxes. It does not appear that these costs will be prohibitive, given the added protection the rule amendments will provide.

As a concession to those firms required to meet the higher minimum requirements, the Commission's proposal would have relaxed the haircut charge associated with securities underwritings, known as the "contractual commitment haircut". The contractual commitment haircut applies to firm commitment underwritings and requires a charge on each net long securities position contemplated by any open contractual commitment in the broker-dealer's proprietary account. Currently, firms are required to take a 30 percent haircut (minus unrealized profits) on their open contractual commitments in equities. The size of this contractual commitment haircut can discourage smaller firms from participating in securities offerings, since the haircut could threaten their net capital compliance.

Because small broker-dealers play an important role in the local capital formation process, the Commission believes that those firms meeting the higher minimum capital requirement should be permitted to enter into small firm commitment underwritings without incurring a significant contractual commitment charge. Therefore, under the rule amendments, broker-dealers that meet the \$250,000 minimum will not be required to charge its capital for any contractual commitment haircut to the extent that the haircut would not exceed \$150,000. For instance, if a broker-dealer participates in an underwriting in which it has a firm commitment to purchase securities, and the appropriate contractual commitment deduction would be \$150,000 or less, the broker-dealer would incur no haircut. Commitments resulting in potential charges in excess of \$150,000 would result in deductions on the amount in excess of \$150,000. This will benefit smaller broker-dealers that wish to engage in underwritings but were previously subject to the full amount of the contractual commitment charge.

In order to clarify the application of the \$250,000 minimum net capital standard, the amendments contain the following definitions. A broker-dealer shall not be deemed to receive funds from customers if it receives checks, drafts, or other evidences of indebtedness made payable to an entity

other than itself (such as another broker-dealer, escrow agent, etc.) and the receiving broker-dealer promptly forwards such funds to the other broker-dealer or escrow agent.¹¹ With regard to securities, a broker-dealer shall be deemed to hold securities if it does not promptly forward such securities received by the firm to a clearing firm, escrow agent or other appropriate entity.

Finally, firms that choose not to meet the new levels, or are unable to do so, will not, as some commentators suggest, be forced to close their doors. Specifically, the lower net capital requirement afforded broker-dealers that operate under the (k)(2)(i) exemption from Rule 15c3-3 will provide many firms that currently hold the assets of their customers an alternative to the higher minimum for clearing and carrying firms. Moreover, they may elect to remain in the securities business with an even lower amount of capital and introduce their accounts to another firm.

The Commission believes that the combined effect of the variety of options contained in the recommended amendments will allow each firm to select an appropriate amount of net capital and tailor its business activities accordingly to meet the requirement it chooses. Thus, firms will not be drawn out of the industry, and the impact on competition will be minimal. For these and the reasons stated above, the Commission is adopting the amendments regarding clearing and carrying firm net capital requirements as proposed.

B. Dealers, Market Makers and Trading Firms

The Commission's proposal would have raised the minimum net capital requirement applicable to dealers, market makers and trading firms to \$100,000 (although market makers are subject to additional net capital requirements discussed below).

(i) Dealers

The types of broker-dealers that fall under the dealer category take risks that far outweigh their present minimum net capital requirements. A minimum net capital level of only \$25,000 is an extremely thin cushion against the risks in a dealer's business, because of the potential for severe market volatility. Additionally, the proliferation of complex securities, including interest-only and principal-only mortgage-backed securities and various option

products have added elements of risk not envisioned when the current minimum standards were adopted. There were no substantial adverse comments to the dealer proposals. Accordingly, the Commission believes firms that fall into this category should have a minimum net capital requirement of at least \$100,000 and is adopting the amendments.

For the purposes of determining whether a person is subject to the higher net capital requirements applicable to dealers, the term "dealer" for that purpose would include those persons that endorse or write over-the-counter options, and any broker-dealer that effects more than ten transactions in any one year for its own investment account, but would exclude firms that underwrite securities on a best efforts or all or none basis, those that engage in certain kinds of riskless principal trading, and certain firms engaged in the sale of redeemable shares of registered investment companies.

(ii) Over-the-Counter Market Makers

In addition to raising the base minimum requirements for market makers, the proposed amendments would raise the additional market maker capital requirement. Currently, securities priced \$5 and below require net capital of \$500 each, while securities priced above \$5 require net capital of \$2,500 each. Under the proposal, the amount to be maintained for securities priced under \$5 per share would be raised from \$500 to \$1,000 per security. The ceiling on this additional net capital requirement would be raised to \$1,000,000, from the present \$100,000. No change to the existing capital requirement of \$2,500 per share for securities priced over \$5 was proposed. The Commission is adopting these amendments as proposed.¹²

Market maker capital requirements have been a cause for considerable concern since at least the market break of 1987. In its Market Break Report, the Division of Market Regulation (the "Division") stated that there should be a review of the minimum amount of capital necessary to qualify as an over-the-counter market maker. The Division noted that the review should include an analysis of the amount of capital necessary for each security, as well as the appropriateness of the capital ceiling of \$100,000. The Division's concern was precipitated by the cessation of business by 12 over-the-

¹¹ The term "promptly forward" is defined in the net capital rule to mean when "such transmission or delivery is made no later than noon of the next business day after the receipt of such funds or securities." Rule 15c3-1(c)(9).

¹² Separately, the Commission is proposing for comment an amendment that would require market makers to maintain capital of \$2,500 per share, regardless of the price of the security.

counter market makers immediately following the October 1987 market break. In some cases, the prices of the securities in which they made a market fell dramatically. Customer obligations, which in some cases were secured by the securities, became uncollectible. The Division pointed out that other broker-dealers and customers are also exposed to potential market losses when a significant market maker in a particular security fails. Other, less significant market makers may withdraw from the system or may restrict their purchases, often resulting in a free-fall in the prices of the securities.¹³

The NASD reacted promptly to the 1987 market break by approving amendments to its Small Order Execution System ("SOES"), which required not only mandatory participation in the SOES for all market makers in certain securities, but also maximum SOES order size limits based on the market characteristics of the securities.¹⁴ Under mandatory SOES participation, market makers are required to accept small orders received through the SOES system. Because the financial requirements resulting from the mandatory SOES obligations require higher capital levels of market makers, the NASD's Quality of Markets Committee recommended that the Commission substantially increase capital requirements for market makers.¹⁵

Despite these recommendations, a number of commentators opposed the Commission's proposal, arguing that increases would discourage firms from making markets, resulting in reduced liquidity, particularly in lower priced stocks. The Commission believes this concern is mainly unfounded. Market makers play an integral role in the securities markets and the Commission believes it is essential for these firms to maintain sufficient capital to discharge their market making activities without disruptions that can interrupt the liquidity in a particular security. Market makers that maintain the bare minimum amount of net capital are, however, frequently unable to assume even the smallest positions in the stocks in which they make markets. Indeed, the Commission believes it is those firms

that maintain the bare minimum amount of capital that pose a threat to liquidity. To the extent such a firm's capital falls below the minimum, the firm is compelled to withdraw as a market maker in some of its market making securities, which could impair the market. This has been a particular problem in the marketplace for those securities priced under \$5 per share, where the failure of market making firms has resulted in the virtual elimination of a public market for many of the securities in which they made markets. When a broker-dealer holds itself out as making a market in a particular security, it should maintain sufficient capital to stand behind that commitment. That commitment is no less important in the market for securities priced below \$5 per share.

Based on these reasons, the NYSE, the NASD and the SIA supported the proposal. In fact, the SIA stated that the proposal did not go far enough. Specifically, the SIA argued that it is inappropriate to distinguish between securities priced above \$5 per share from those that are priced below \$5 per share in determining capital requirements. The Commission preliminarily agrees with the recommendation of the SIA and believes that a further amendment to the net capital rule is warranted.

Therefore, the Commission, in a separate release, is proposing for comment an amendment that would raise the requirement to \$2,500 per security, regardless of the price of the security.

C. Introducing Firms

(i) Introduction

An introducing broker-dealer is one that has a contractual arrangement with another firm, known as the carrying or clearing firm, under which the carrying firm agrees to perform certain services for the introducing firm. Usually, the introducing firm submits its customer accounts and customer orders to the carrying firm, which executes the orders and carries the account. The carrying firm's duties include the proper disposition of the customer funds and securities after trade date, the custody of customer securities and funds, and the recordkeeping associated with carrying customer accounts.¹⁶

¹⁶ A fully disclosed introducing arrangement should be distinguished from an omnibus clearing arrangement where the clearing firm maintains one account for all the customer transactions of the introducing firm. In an omnibus relationship, the clearing firm does not know the identity of the customers of the introducing firm. In a fully-disclosed clearing arrangement, the clearing firm knows the names, addresses, securities positions

The practices regarding the handing of customer funds and securities vary among different introducing and clearing dealers. In many cases, the customer gives funds and securities directly to the introducing firm, which in turn is obligated to forward them to the clearing firm. In other cases, the customer sends funds and securities directly to the clearing firm.¹⁷

The receipt of customer funds or securities by inadequately capitalized introducing firms is a major concern of both the Commission and SIPC. Recognizing this concern, the proposing release would have created three tiers of introducing firm minimum net capital requirements, based on the frequency with which the introducing firm handles customer property. Firms that routinely handle customer funds or securities would have been required to maintain \$100,000 in net capital. Brokers that occasionally handle funds and securities would have been required to maintain \$50,000 in minimum net capital. Firms that never receive funds or securities would remain in a \$5,000 category.

The Commission has decided to take a two-step approach to the minimum net capital requirements applicable to introducing firms. First, the Commission is abandoning the three-tier distinction that was based on the occasional versus routine receipt of securities in favor of a two-tier system which would have a \$50,000 minimum for firms that receive any securities, and a \$5,000 minimum for those that do not. The second phase of the Commission's action with respect to introducing firms will be the additional proposal of an amendment raising the \$5,000 minimum to \$25,000. Discussed more fully below are the specifics of the Commission's action and the reasons for the increases.

and other relevant data as to each customer. For the purposes of the net capital rule, broker-dealers that introduce accounts on an omnibus basis are considered clearing firms.

¹⁷ Under paragraph (a)(2) of the net capital rule, introducing firms are prohibited from holding funds or securities for customers. They are required to promptly forward all funds and securities they receive to their carrying firm. In addition to these requirements, in order to take advantage of the \$5,000 minimum, fully disclosed introducing firms must have a clearing agreement that states that for purposes of SICA and the financial responsibility rules, the introduced customer accounts are the responsibility of the carrying firm. See Letter from Richard G. Ketchum, Director, Division of Market Regulation of David Marcus, New York Stock Exchange, January 14, 1985, ("Ketchum Letter"). Despite this requirement, SIPC exposure can result from the failure of an introducing firm in possession of customer property.

¹³ See the October 1987 Market Break, a Report by the Division of Market Regulation of the U.S. Securities and Exchange Commission, February 1988, (the "Market Break Report") pp. 5-11, 12 and 15.

¹⁴ See File No. SR-NASD-88-1, Securities Exchange Act Release No. 25791 (June 9, 1988).

¹⁵ See Report of the Special Committee of the Regulatory Review Task Force on the Quality of Markets, NASD publication, 1988, p. 15.

(ii) Need For Increases

The net capital rule requires introducing brokers to promptly forward all customer funds and securities to the clearing broker-dealer. Even when this requirement is complied with, as the commentators pointed out, many customers make checks payable or endorse securities directly to the introducing firm. SIPC has expressed its concern to the Commission regarding " * * * situations where the SIPC member involved in the customer protection proceeding is a broker-dealer exempt from the provisions of SEC Rule 15c3-3, and subject to less than the full net capital requirements of SEC Rule 15c3-1." SIPC reported in August 1991, that since January 1986, twenty introducing firms have become the subject of SIPC proceedings. In those proceedings, SIPC has paid \$8,226,330 to satisfy customer claims and \$3,405,385 for administrative expenses. SIPC has also informed the Commission that in one of these customer protection proceedings the trustee has received and is reviewing claims for customer protection of approximately \$6 million.

Although the firms that are the subjects of these proceedings were prohibited from holding customer property, they were nevertheless in a position where they were able to obtain access to customer assets through a variety of schemes. Some of the SIPC proceedings involved firms that obtained customers' funds by soliciting those funds directly from the customers for investment in a "certificate of deposit" or other instruments issued by the broker-dealer. Some SIPC proceedings involve introducing firms that misappropriated funds by instructing clearing firms to place customer funds into accounts controlled by the introducing firm. Other cases involve introducing firms that failed to transmit customer monies entrusted for investment; in these cases, introducing firms converted the customer funds by forging the endorsement on the checks given to them by customers.

In one case, for example, principals of a firm converted \$4.3 million of checks written by at least 129 customers made payable to the firm. Those funds were entrusted to the firm for purchase of certificates of deposit and mutual funds. Instead of investing them as instructed by the customer, the principals of the firm diverted the funds for their personal use. Although the firm misappropriated \$4.3 million of customer property, SIPC reimbursed customers for only \$2.9 million. For the most part, most of the shortfall was due

to claims that exceeded the limitations on SIPC advances.¹⁸

Two recent Commission proceedings further illustrate the Commission's concerns. In the first, the broker misappropriated over \$1.1 million of customer funds that were intended to be invested in securities. In the second, a particularly egregious case, a broker-dealer in Florida solicited money from investors by advertising, among other places, in local church flyers. Customers alleged they were purchasing certificates of deposit from the broker-dealer to be held by the broker-dealer. However, the owner of the broker dealer converted the funds, and after his scheme was discovered, committed suicide. It appears that the amount of stolen funds could reach \$4 million. The case is further complicated by the fact that SIPC may not reimburse the customers on the grounds that the investments in question may be characterized as a loan to the broker-dealer.

Investors who give funds and securities to broker-dealers do so with some degree of assurance that their property is safe when entrusted with an entity registered with and regulated by the Commission. However, many investors are not able to ascertain the difference between a registered broker-dealer that is well capitalized and one that is not, and under what circumstances SIPC coverage is provided.

A second element of concern for the customers of introducing firms involves the customer's relationship with the clearing firm. Customers can be stranded if the introducing firm fails or closes temporarily due to a capital violation. Generally, the clearing firm will not accept orders directly from the customers because the clearing firm will consider the customers as those of the introducing firm. As a result, customers may be unable to liquidate their securities positions or open new positions until their accounts are transferred to another broker-dealer. Although higher minimums will not eliminate this risk, the increased standards will increase the likelihood that the firm can quickly find a purchaser for its assets and avoid an NASD supervised self-liquidation.

Aside from the impact on customers, there is a risk of sudden losses to

clearing firms when introducing firms fail. For example, during periods of market decline, customer accounts may become unsecured due to sharp drops in the value of securities in margin accounts or because of changes in the value of customer short option positions. If a customer fails to meet margin calls made by the clearing firm or fails to pay the settlement amount for securities it has purchased, the introducing firm, because most clearing arrangements place liability on the introducing firm for deficits in introduced accounts, will bear the loss from the default. If the introducing firm does not have adequate resources to pay the clearing firm, the clearing firm incurs the loss.¹⁹

Two examples are illustrative. During the October 1987 market break, Haas Securities Corporation, a fully disclosed introducing broker-dealer and a market maker in eleven securities, ceased operations. As a result of unsecured customer accounts introduced by Haas, its clearing firm incurred a reduction in its net capital between \$15 and \$20 million.²⁰ More recently, an introducing broker was involved in a manipulation scheme wherein three registered representatives at the introducing firm attempted to corner the market in a particular security by placing large amounts of unauthorized purchases of the security in a number of customer accounts. As a result of the manipulation, the security rose in value, but trading in the security was suspended after the scheme was discovered and never resumed. The security served as margin for debits owned by customers of the registered representatives and became worthless when trading was suspended. As a result of this occurrence, the clearing firm incurred losses in excess of \$20 million. The introducing firm could not cover losses of this magnitude. At the time of the manipulation, the clearing firm was owned by another broker-dealer. Mainly as a result of the losses incurred through the manipulation, the clearing firm was acquired by another broker-dealer and then eventually

¹⁸In imposing sanctions on an introducing firm for failing to disclose to its carrying firm material facts as to the creditworthiness of one of its customers, the Commission recognized the potential credit exposure of clearing firms and stated: "It is true that [the introducing firm] had a contractual obligation to indemnify [the clearing broker] for losses. However, considering [the introducing firm's] small net capital * * * there was a substantial likelihood that the clearing brokers would themselves have to bear all or part of any potential losses." In re Boylan, Securities Exchange Act Release No. 18376 at 45 n.33 (January 14, 1982).

²⁰See Market Break Report at pg. 5-11.

¹⁹Under section 9 of SIPA, when the amount of customer property present in a failed firm is insufficient to meet the claims of customers, SIPC must make advances to customers to cover the shortfall in each customer's claim. Those advances are limited to a total of \$500,000 of cash and securities per customer, with a \$100,000 limitation on claims for cash.

liquidated. Before the liquidation, the clearing firm cleared for 154 introducing brokers.

Indeed, many clearing firms require introducing firms to maintain net capital in excess of that required by the net capital rule (in addition to a clearing deposit) before they will transact business with an introducing firm. One firm will not clear for an introducing broker-dealer unless the firm has at least \$150,000 in net capital. However, because industry practice is not uniform, weaknesses tend to develop. Assuming that risk-conscious clearing firms require their introducing firms to maintain the greatest amount of capital, the Commission is concerned that clearing firms that are not as sensitive to risk will tend to have a higher concentration of poorly capitalized introducing firms. The failure of one large introducing firm could weaken such a clearing firm, with a ripple effect that could expose other firms that clear through the same broker-dealer. If such a firm fails, not only will customers of that firm suffer, but a large number of market makers in lower priced securities might fail with it, resulting in significantly reduced liquidity in the markets for their securities.

(iii) Interpretation of Introducing Accounts on a Fully Disclosed Basis

There is a general misunderstanding among customers of securities firms as to the relationship between a clearing firm and an introducing firm and the responsibilities of each firm as to the customers' assets. Even in instances where those responsibilities are clearly outlined, customers are generally unable to distinguish an introducing firm from a full service broker-dealer that is authorized to maintain custody of their investment property. Customers are often not aware that their funds and securities are located at the clearing firm (rather than at the introducing firm). When an introducing firm fails, Commission staff members frequently receive inquiries from the introducing firm's customers regarding the whereabouts of their funds and securities.

The Division has interpreted the net capital rule and Rule 15c3-3 to require that, for the purposes of the Commission's financial responsibility rules and SIPC, the introducing firm's customers should be treated as customers of the clearing firm.²¹ The Division has also interpreted revised paragraphs (a)(2)(i) and (a)(2)(iv) of the net capital rule to require an introducing firm, in order to fall under

the terms of paragraph (a)(2)(iv), to have in place a clearing agreement with a registered broker-dealer that states, for the purposes of SIPA and the Commission's financial responsibility rules, customers are customers of the clearing, and not the introducing, firm. Furthermore, the clearing firm must issue account statements directly to customers. Each statement must contain the name and telephone number of a responsible individual at the clearing firm whom a customer can contact with inquiries regarding the customer's account. Finally, the account statement must disclose that customer funds or securities are located at the clearing broker-dealer, and not the introducing firm.

An introducing firm without such an arrangement will not be considered, for the purposes of the Commission's financial responsibility rules, to be a firm that "introduce[s] transactions and accounts of customers to another registered broker or dealer that carries such accounts on a fully disclosed basis." Absent such an arrangement, the introducing firm would be required to comply with the greater minimum net capital requirements required of a clearing firm.²²

(iv) Industry Response and Commission Action

When the amendments were proposed, the Commission was sensitive to the potential impact of the increases. Accordingly, the Commission solicited comments from the introducing firm community on their potential impact.

Approximately 100 small broker-dealers objected to the proposals, arguing that the increases would either eliminate smaller firms, or prevent small broker-dealers from entering the industry. Other commentators objected to the size of the increases or the asserted lack of any need for them. As an alternative, a number of firms suggested that the Commission could accomplish its regulatory goals more fairly by drafting a net capital rule that would call for incremental increases for different types of business activity. For example, if a firm transacted a margin business, its minimum net capital requirement would increase by a pre-established factor. However, this approach would require the net capital rule to make dozens of distinctions that would further complicate the regulatory process. It is important for the net

capital rule to be based on readily identifiable minimum classification requirements. Therefore this suggestion does not provide a workable alternative to the base requirement approach currently in place.

It appears that the primary objection to the proposed increases concerned the costs associated with raising additional capital and the impact on competition in the industry. To assess the cost of the proposed rules, using the NASD Data, the Division examined the capitalization of the industry to determine how many firms would need to raise additional funds. The Division also estimated the approximate costs of raising the additional capital.

The NASD Data does not distinguish between introducing brokers that receive funds and securities and those that do not. The assumption was made that all firms receive customer property to assess the maximum impact of the recommended amendments. Under this assumption, the calculations demonstrate that 919 introducing brokers (out of 2,301) would need total additional capital of \$25 million to comply with the new \$50,000 standard, or an average of \$27,180 per firm. Based on an eight percent spread of cost of capital,²³ the new standards would cost each broker an average of approximately \$2,174 per year. The Commission believes this is a slight insurance premium in light of the benefits that would be derived from the increase.

To assess the impact of the proposal on the industry, introducing firm revenue data was examined. Out of a total \$4.96 billion in annual revenues generated by NASD member introducing firms, only \$304 million is accounted for by firms with less than \$50,000 in net capital. In other words, the amendments would at most affect the 919 firms that account for 6.1 percent of the total introducing firm revenues.

Thus, the data suggests the impact of the increases will not be dramatic. Notwithstanding, the Commission believes certain refinements to the original proposal are warranted. For example, a number of commentators, including the NASD, objected to the Commission's classification of minimum net capital levels based on the distinction between occasional and routine receipt of customer funds and securities.²⁴ The NASD suggested a reconsideration of the \$100,000 category which would apply to those introducing

²² Additionally, in order to take advantage of the revised \$5,000 minimum net capital requirement, introducing firms will be required to notify their customers that the firm is prohibited from receiving funds (other than checks made out to third parties) or securities.

²³ For a discussion of the cost of capital, see section 2(B) (iii) *supra*.

²⁴ The NASD, the self-regulatory organization charged with overseeing the bulk of introducing firms, generally endorsed the new requirements.

²¹ See Ketchum Letter, *supra* note 17.

firms that routinely receive customer funds or securities. Such introducing brokers would have the same capital requirement as broker-dealers that receive funds and securities pursuant to the provisions of paragraph (k)(2)(i) of Rule 15c3-3. As the NASD pointed out, introducing firms could, without changing their capital requirement, clear accounts under the (k)(2)(i) method. To prevent this, the NASD recommended the establishment of two classifications of introducing firms: A \$50,000 minimum for firms that receive securities and a \$25,000 minimum level for those that do not.

The Commission believes that the NASD's approach represents a reasonable compromise between the Commission's and the commentators' concern regarding the impact of the amendments on introducing firms. Accordingly, the three tier approach that would distinguish between occasional and routine receipt of funds and securities is not being adopted and will be supplanted by the approach recommended by the NASD.

Therefore, the Commission is adopting the proposal that would increase the minimum net capital requirement of introducing firms that receive securities to \$50,000. The Commission is also adopting, on a temporary basis, the proposed \$5,000 minimum requirement. Under the approach adopted by the Commission, an introducing broker-dealer that receives customer checks made payable to itself would be subject to a \$250,000 minimum net capital requirement. An introducing broker-dealer that receives securities as well as customer checks made payable to its clearing firm or other appropriate third party (e.g., escrow agent) that it promptly forwards to such third party would be subject to a minimum net capital requirement of \$50,000. An introducing broker-dealer that receives no securities and only receives customer checks made payable to appropriate third parties would be subject to a \$5,000 minimum net capital requirement.²⁵

In a separate release, the Commission is proposing for comment the additional amendment that would raise the net capital requirements of this second tier of introducing firms to \$25,000. The Commission considers the increased

requirements to be more reasonably related to the level of capital needed to maintain successfully a securities business.

In addition to raising the base minimum capital requirements, the Commission's original proposal would have required an introducing firm to maintain additional net capital equal to one quarter of one percent of the customer debit balances introduced to its clearing firm. This requirement was designed to further address the situation where clearing firms have their capital endangered by the failure or financial difficulty of an introducing firm. The commentators, including the NASD, pointed out that the requirement would be difficult to calculate, and therefore difficult to enforce. Moreover, it would add very little to the capital requirements of most introducing firms. Based on these comments, the Commission has decided not to adopt this proposal.

The final component of the original proposal with regard to introducing firms was an amendment that would allow firms to participate in underwritings in which other members of the dealer group have firm commitments (an activity not allowed the current \$5,000 broker-dealer) so long as the introducing firm is not the statutory underwriter, but a marketing agent with no commitment to purchase any of the securities. The rule amendments make it clear that this is a dealer activity (that would ordinarily subject the firm to a minimum requirement of \$100,000), but permit introducing firms that maintain minimum net capital of at least \$50,000 to engage in this activity.

In conclusion, the Commission believes it is appropriate to raise the minimum net capital requirements for introducing firms in the amounts indicated. The Commission believes the increases are justified because of the large amounts of customer assets handled by introducing firms, and the impact such firms' failures can have on customers and the SIPC fund. Permitting undercapitalized introducing firms to handle, even for a short period of time, the assets of investors has proven to be a regulatory problem that the Commission believes will be alleviated by requiring a greater cushion of net capital to insulate customers from loss. Finally, the Commission notes that it is taking today's action at the request of the NASD, which is the primary supervisory entity for the majority of the firms affected by the increases, and SIPC, which serves as the investor's last resort for recovery in broker-dealer failures.

D. Other Broker-Dealers

This section of the release will address the minimum net capital treatment for all other categories of broker-dealers not specifically referred to above.

(i) Mutual Fund Firms

Under the Commission's proposal, the minimum net capital requirement applicable to broker-dealers that limit their activities to transactions in shares of registered investment companies, and which receive customer funds or securities, would increase from \$2,500 to \$25,000. For those mutual fund firms that do not handle any customer funds or securities, and are not direct wire order firms, a \$5,000 minimum was proposed. The Commission is adopting these amendments.

The firms that commented on the increase from the current \$2,500 minimum to \$25,000 were generally opposed to it. These firms feared that increasing minimum capital requirements would eliminate firms and stifle competition in the mutual fund industry. However, the Commission considers a capital requirement of \$2,500 to be far too small for a firm that handles funds and securities. Moreover, the NASD Data does not indicate that the proposed increases would have a dramatic effect on competition. The Division has calculated that of a total 409 NASD mutual fund firms, 195 firms would require a total of \$3 million or an average of \$15,325 each to meet the \$25,000 level. These firms generated revenues of \$15.6 million, which represented only 1.2 percent of the total \$1.31 billion in revenues produced by all NASD member mutual fund firms during the last year.

(ii) Best Efforts Underwriters

Under the current rule, firms that participate, as a broker or dealer, in underwritings on a "best efforts" basis and that promptly forward all customer funds and securities to an issuer or an independent escrow agent designated for the underwriting are required to maintain minimum net capital of only \$5,000. In effect, these firms are treated as introducing firms. Currently, broker-dealers that sell direct participation programs in real estate syndications also may avail themselves of this standard, so long as any funds or securities are promptly forwarded to an issuer or escrow agent. The original proposal did not propose an increase in minimum capital requirements for these firms; rather it added a provision which prohibited these firms from receiving

²⁵ It should be noted that the \$5,000 standard adopted today differs from the previous \$5,000 requirement. Under the new rule, introducing firms will be prohibited from receiving customer securities and funds (other than checks payable to third parties). It will be necessary for these firms to develop procedures to insure that they do not receive customer securities or checks made payable to themselves.

any customer funds or securities. This aspect of the proposal is being adopted.

(iii) Miscellaneous Brokers

The original release did not propose any increases applicable to the residual category of broker-dealers that would include broker-dealers that are tangentially related to the securities business, such as firms that act as finders for potential merger and acquisition opportunities on behalf of their clients. Such firms do not take customer orders, hold customer funds or securities or execute customer trades, yet must register as broker-dealers with the Commission because they accept compensation based upon a percentage of securities transactions. Firms with this low required minimum will be those that cannot be classified in any of the categories enumerated above. This category also would include floor brokers on the national securities exchanges.

(iv) Further Proposals

As to each of the categories of firms described in paragraphs (i) through (iii) above, in a separate release, the Commission is proposing for comment an increase in the minimum net capital requirements to \$10,000.

E. Phase-In Schedule

Because of the burden that the amendment may have on the industry, the proposal contained a provision that would have staggered the increases over a period of four years. Some commentators suggested that the phase-in schedule was unnecessary. Others suggested that the time period should be reduced, although others recommended an increase in time. The Commission has decided to adopt a modified phase-in period of one year, commencing six months from the effective date. The Commission considers this to be a fair period of time within which additional capital could be acquired, particularly since the proposal has been outstanding since 1989. The timing of the increases is summarized below:

- i. *Firms That Carry Customer Accounts (Aggregate Indebtedness Standard)*
 - a. Current Rule: \$25,000
 - b. By 6/30/93: \$100,000
 - c. By 12/31/93: \$175,000
 - d. By 6/30/94: \$250,000
- ii. *Firms That Elect The Alternative Standard*
 - a. Current Rule: \$100,000
 - b. By 6/30/93: \$150,000
 - c. By 12/31/93: \$200,000
 - d. By 6/30/94: \$250,000
- iii. *Clearing Firms That Do Not Generally Maintain Custody of Customer Funds or Securities*
 - a. Current Rule: \$25,000
 - b. By 6/31/93: \$50,000

- c. By 12/31/93: \$75,000
- d. By 6/30/94: \$100,000
- iv. *Mutual Fund Dealers That Receive Customer Funds*
 - a. Current Rule: \$2,500
 - b. By 6/30/93: \$10,000
 - c. By 12/31/93: \$17,500
 - d. By 6/30/94: \$25,000
- v. *Mutual Fund Dealers That Do Not Receive Customer Funds*
 - a. Current Rule: \$2,500
 - b. By 6/30/93: \$3,300
 - c. By 12/31/93: \$4,100
 - d. By 6/30/94: \$5,000
- vi. *Introducing Firms That Receive Customer Securities*
 - a. Current Rule: \$5,000
 - b. By 6/30/93: \$20,000
 - c. By 12/31/93: \$35,000
 - d. By 6/30/94: \$50,000

The Commission's original proposal, in addition to addressing the minimum net capital standards discussed above, also contained proposed rule amendments with respect to equity haircuts and certain aggregate indebtedness charges. The following sections of this release will address these topics.

III. Election of the Alternative Standard

The Commission proposed to make the alternative available only to firms that clear and carry customer transactions. That would have altered the present rule which allows trading firms and introducing firms to elect the alternative method of calculating net capital. After careful consideration, the Commission has determined to make the alternative standard available to all firms.

The Commission believes the amendment that would have prevented the election of the alternative standard by firms that do not carry customer accounts is not appropriate for several reasons. First, a firm could easily render the prohibition ineffective by accepting one customer account. Secondly, under the amendments as adopted, a firm must maintain at least \$250,000 in order to compute under the alternative.²⁶ The Commission believes that the \$250,000 capital requirement will provide sufficient cushion to compensate for the additional capital that would have been required for those firms under the aggregate indebtedness standard. Indeed, a firm will have to have more than approximately \$3.8 million in aggregate indebtedness before its net capital requirement would exceed the \$250,000 minimum. Finally, the Commission's concern with respect to

leverage that can be attained by trading firms was addressed by the Commission's recent adoption of a new early warning level under paragraph (e) of the net capital rule based on 25 percent of haircuts. That early warning level change will address some of the Commission's concerns and constrain firms with large trading positions from removing capital from the broker-dealer in the event of financial distress.

IV. Equity Securities Haircuts

A. General

The net capital rule provides two separate methods for calculating haircuts related to a broker-dealer's equity securities positions. The method used by a broker-dealer depends on the election the broker-dealer makes with respect to its net capital requirement. A firm calculating its net capital requirement under the basic method incurs a haircut equal to 30 percent of the market value of the greater of its long or short positions, plus 15 percent of the lesser positions, but only to the extent that those positions exceed 25 percent of the market value of the greater of the long or short positions. In effect, the first 25 percent of the lesser position incurs no haircut.²⁷

Under the current rule, a broker-dealer electing the alternative method of computing net capital incurs a 15 percent haircut on its long equity securities positions. That haircut is increased by 30 percent of the broker-dealer's short equity positions, but only to the extent those short positions exceed 25 percent of the long positions.²⁸

The basis for the distinction between long and short positions is, for haircut purposes, no longer valid. The distinctions based upon the method chosen are, the Commission believes, even less significant when the increases to the minimum requirements are taken into account. The premise underlying the alternative method of calculating haircuts was that long positions have to be financed by an outside entity that will demand more margin than the 15 percent haircut. Short positions, by contrast, are self-financing.

Broker-dealers are not necessarily constrained by the ability to finance their long positions by a bank or another broker-dealer. For example, broker-dealers are able to receive cash collateral in excess of the market value

²⁷ For example: Position: Long, \$1,000,000; Short, \$500,000. Haircut: Long, \$300,000; Short, \$37,500 (15% of \$250,000); Total, \$337,500.

²⁶ The rule amendments also require a broker-dealer to notify its designated examining authority of its election to select the alternative standard; the rule previously required the broker-dealer to notify the appropriate Regional Office of the Commission.

²⁸ For example: Position: Long, \$1,000,000; Short, \$500,000. Haircut: Long, \$150,000; Short, \$75,500 (30% of \$250,000); Total, \$225,500.

of the long position by lending the security to another broker-dealer. Moreover, except for situations such as tender offers, the long position would seem to be no less volatile or damaging to the broker-dealer than the short position.

One commentator expressed the view that, given the volatility of the equity markets, all haircuts should remain at 30 percent. However, the Commission believes that a 15 percent haircut provides an adequate safeguard and is adopting the proposal. Thus, under the amended rule, all broker-dealers will incur a deduction of 15 percent on the market value of the greater of the long or short equity position, and a deduction of 15 percent on the market value of the lesser position, but only to the extent this lesser position exceeds 25 percent of the greater position.²⁹

In addition to standardizing the deduction for equity securities positions under the net capital rule, the proposal would have required broker-dealers to apply the equity securities haircut (15 percent), rather than the lower, government securities haircut (6 percent), to their positions in interest and principal only instruments. In response to this proposal, the Public Securities Association submitted data suggesting that a lower haircut should be applied. The Commission is not adopting this amendment, and will await a further recommendation by the Commission staff in this regard.

B. Undue Concentration Charge

Paragraphs (c)(2)(vi)(M) and (f)(iii) currently include extra deductions for securities positions that are large relative to a firm's net capital. These "undue concentration charges" currently vary slightly depending on the firm's election of either the basic or alternative method. The Commission's proposal would eliminate this difference, and standardize the deduction, so that all concentration charges would be calculated according to the method previously set forth in paragraph (f) of the rule. There were no comments on this aspect of the proposal; therefore, the Commission is adopting this amendment as proposed.³⁰

²⁹ As proposed, this lowered haircut would have been available to firms only when they crossed the \$100,000 net capital threshold. However, the NASD suggested that this would be difficult to monitor. Based on this recommendation the Commission is not adopting this amendment. The contractual commitment haircut will remain at 30 percent for initial public offerings. Similarly, the haircut assessed for receivables arising in conjunction with subordinated loans will remain at 30 percent.

³⁰ A broker-dealer is also required to deduct the portion of a long equity securities position that it

C. Contractual Commitments

The Commission's proposal, although it would standardize equity securities haircuts at 15 percent, would have nonetheless required a 30 percent charge for the contractual commitment haircut in certain securities. The Commission is adopting this amendment as proposed. Therefore, the contractual commitment haircut applicable to equity securities shall remain at 30 percent unless the class and issue of the securities are listed on a national securities exchange or are designated as NASDAQ National Market System Securities.

V. Aggregate Indebtedness

The aggregate indebtedness test has been included in the net capital rule since its adoption in 1942. The term aggregate indebtedness includes all of the liabilities and/or obligations (actual or otherwise) of a broker-dealer. The test applies to broker-dealers computing net capital under the basic method and limits the leverage that they are able to attain. The rule however, specifically excludes from aggregate indebtedness certain prescribed liabilities. In the two classes of liabilities described below, the Commission believes the 6 $\frac{2}{3}$ percent aggregate indebtedness charge is not appropriate, particularly in light of the increases in the minimum requirements. Therefore, the Commission's proposal would have reduced the 6 $\frac{2}{3}$ percent charge to one percent in the two areas discussed below. Both of these amendments are being adopted as proposed.

A. Mutual Fund Payables

Currently, the net capital rule requires a broker-dealer that owes money to a mutual fund in connection with a purchase of shares of that fund to include that amount in aggregate indebtedness even if offset by a receivable from another broker-dealer related to that transaction.³¹

Currently, the net capital rule requires a charge of 6 $\frac{2}{3}$ percent on these mutual fund payables. The Commission's

holds that is large in relation to the trading volume for that security. This is generally referred to as the "blockage test".

³¹ This payable arises out of a purchase of shares by the broker-dealer directly from the fund for another broker-dealer (presumably for the other broker-dealer's customer). The first broker-dealer owes money to the fund secured by the investment company shares. The second broker-dealer owes money to the first broker-dealer. The debt on the first broker-dealer's books is offset by a receivable from the second broker-dealer, classified generally as a fail to deliver. That receivable is also secured by the mutual fund shares, since delivery of the shares will not occur until payment of the obligation by the second broker-dealer.

proposal would lower this deduction to one percent of the liability amount when an offset from the mutual fund exists. Other than the request for clarification discussed in the following paragraph, the Commission received no comments on this amendment, and is adopting it as proposed.

A number of commentators wrote to the Commission requesting clarification in the method of computation. Specifically, the commentators questioned why the proposed rule amendment contained an 85 percent aggregate indebtedness exclusion when the narrative description of the rule change in the proposing release described a one percent aggregate indebtedness charge. The answer is that 6 $\frac{2}{3}$ percent of .15 (remaining after .85 is deducted from one) gives the same result as one percent of one. The method chosen for reducing the charge was designed for consistency with the present status of the rule.

B. Stock Loan Payables

A stock loan payable is a liability arising from the receipt of cash collateral from a person who borrows securities from the broker-dealer. The payable is considered aggregate indebtedness even if the securities that were loaned were borrowed from another broker-dealer.³² The current rule requires a 6 $\frac{2}{3}$ percent charge on these items. As with mutual fund receivables, the Commission's proposal would reduce this charge to one percent.

Given the matched nature of these related payables and receivables, the Commission does not believe that the risk merits a charge of 6 $\frac{2}{3}$ percent on the dollar amount of the liability; therefore, the Commission is adopting the amendment as proposed.

VI. Technical Amendments

Because of the amendments to the minimum net capital requirements and equity securities haircuts, the Commission is merging paragraph (f) into paragraph (a) of the rule. As a result, the rule amendments include several technical changes to the rule.

³² When one broker-dealer lends securities to another broker-dealer, the lending broker-dealer generally receives cash collateral in excess of the value of the securities lent. For financial statement purposes, the lending broker-dealer accounts for the cash collateral as a liability, since that broker-dealer must repay the funds to the borrowing broker-dealer upon return of the securities.

Much of the stock lent by broker-dealers to other broker-dealers is borrowed from a third broker-dealer or other person. If a broker-dealer borrows stock through a stock loan transaction collateralized by cash, the borrowing broker-dealer accounts for the collateral in its financial statements as a receivable from the lending person.

For example, all references to paragraph (f) are deleted and new references to appropriate rule sections are substituted. Other examples include the amendments to the concentration charges under paragraph (c)(2)(vi)(M) and the contractual commitment charge under paragraph (c)(2)(viii). The amendments also delete a provision from paragraph (c)(2)(ix) of Rule 15c3-1 that expired on January 1, 1983.

VII. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis ("Analysis") in accordance with 5 U.S.C. 603 regarding the amendments. The Analysis notes that the objective of the amendments is to further the purposes of the various financial responsibility rules that provide safeguards with respect to the financial responsibility and related practices of brokers-dealers. The Analysis states that the Commission did not receive any comments concerning the Initial Regulatory Flexibility Analysis. A copy of the Analysis may be obtained by contacting Roger G. Coffin, Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549, (202) 727-7375.

VIII. Statutory Analysis

Pursuant to the Securities Exchange Act of 1934 and particularly sections 15(c)(3), 17 and 23 thereof, 15 U.S.C. 78o(c)(3), 78q and 78w, the Commission is adopting amendments to § 240.15c3-1 of title 17 of the Code of Federal Regulations in the manner set forth below.

IX. List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

X. Text of the Amendments

In accordance with the foregoing, title 17, chapter II, part 240 of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78l(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, and 80b-11, unless otherwise noted.

2. Section 240.15c3-1 is amended by removing paragraph (f), removing the word "and" from paragraph (c)(1)(xii),

removing and reserving paragraphs (a)(3), (a)(5) and (c)(2)(vi)(I), adding paragraphs (c)(1)(xiv) and (c)(1)(xv) and revising paragraphs (a) introductory text, (a)(1), (a)(2), (a)(4), (a)(6)(i), (a)(7)(i), (a)(9), (c)(1)(xiii), (c)(2)(i)(C)(1), (c)(2)(iv)(B), (c)(2)(iv)(F)(3)(1)(B) and (C), (c)(2)(vi) introductory text, (c)(2)(vi)(A)(5), (c)(2)(vi)(J) and (M), (c)(2)(viii), (c)(2)(ix), (c)(2)(x)(A)(2) through (5), (c)(9), and (c)(10) to read as follows:

§ 240.15c3-1. Net capital requirements for brokers or dealers.

(a) Every broker or dealer shall at all times have and maintain net capital no less than the greater of the highest minimum requirement applicable to its ratio requirement under paragraph (a)(1) of this section, or to any of its activities under paragraph (a)(2) of this section. Each broker or dealer also shall comply with the supplemental requirements of paragraphs (a)(4) and (a)(9) of this section, to the extent either paragraph is applicable to its activities. In addition, a broker or dealer shall maintain net capital of not less than its own net capital requirement plus the sum of each broker's or dealer's subsidiary or affiliate minimum net capital requirements, which is consolidated pursuant to Appendix C, § 240.15c3-1c.

Ratio Requirements

Aggregate Indebtedness Standard

(1)(i) No broker or dealer, other than one that elects the provisions of paragraph (a)(1)(ii) of this section, shall permit its aggregate indebtedness to all other persons to exceed 1500 percent of its net capital (or 800 percent of its net capital for 12 months after commencing business as a broker or dealer).

Alternative Standard

(ii) A broker or dealer may elect not to be subject to the Aggregate Indebtedness Standard of paragraph (a)(1)(i) of this section. That broker or dealer shall not permit its net capital to be less than the greater of \$250,000 or 2 percent of aggregate debit items computed in accordance with the Formula for Determination of Reserve Requirements for Brokers and Dealers (Exhibit A to Rule 15c3-3, § 240.15c3-3a). Such broker or dealer shall notify its Examining Authority, in writing, of its election to operate under this paragraph (a)(1)(ii). Once a broker or dealer has notified its Examining Authority, it shall continue to operate under this paragraph unless a change is approved upon application to the Commission. A broker or dealer that elects this standard and is not exempt from Rule 15c3-3 shall:

(A) Make the computation required by § 240.15c3-3(e) and set forth in Exhibit A, § 240.15c3-3a, on a weekly basis and, in lieu of the 1 percent reduction of certain debit items required by Note E (3) in the computation of its Exhibit A requirement, reduce aggregate debit items in such computation by 3 percent;

(B) Include in Items 7 and 8 of Exhibit A, § 240.15c3-3a, the market value of items specified therein more than 7 business days old;

(C) Exclude credit balances in accounts representing amounts payable for securities not yet received from the issuer or its agent which securities are specified in paragraphs (c)(2)(vi)(A) and (E) of this section and any related debit items from the Exhibit A requirement for 3 business days; and

(D) Deduct from net worth in computing net capital 1 percent of the contract value of all failed to deliver contracts or securities borrowed that were allocated to failed to receive contracts of the same issue and which thereby were excluded from Items 11 or 12 of Exhibit A, § 240.15c3-3a.

Futures Commission Merchants

(iii) No broker or dealer registered as a futures commission merchant shall permit its net capital to be less than the greater of its requirement under paragraph (a)(1)(i) or (ii) of this section, or 4 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the customer's account).

Minimum Requirements

See Appendix E (§ 240.15c3-1E) for temporary minimum requirements.

Brokers or Dealers That Carry Customer Accounts

(2)(i) A broker or dealer (other than one described in paragraphs (a)(2)(ii) or (a)(8) of this section) shall maintain net capital of not less than \$250,000 if it carries customer or broker or dealer accounts and receives or holds funds or securities for those persons. A broker or dealer shall be deemed to receive funds, or to carry customer or broker or dealer accounts and to receive funds from those persons if, in connection with its activities as a broker or dealer, it receives checks, drafts, or other evidences of indebtedness made payable to itself or persons other than the requisite registered broker or dealer carrying the account of a customer, escrow agent, issuer, underwriter,

sponsor, or other distributor of securities. A broker or dealer shall be deemed to hold securities for, or to carry customer or broker or dealer accounts, and hold securities of, those persons if it does not promptly forward or promptly deliver all of the securities of customers or of other brokers or dealers received by the firm in connection with its activities as a broker or dealer. A broker or dealer, without complying with this paragraph (a)(2)(i), may receive securities only if its activities conform with the provisions of paragraphs (a)(2) (iv) or (v) of this section, and may receive funds only in connection with the activities described in paragraph (a)(2)(v) of this section.

(ii) A broker or dealer that is exempt from the provisions of § 240.15c3-3 pursuant to paragraph (k)(2)(i) thereof shall maintain net capital of not less than \$100,000.

Dealers

(iii) A dealer shall maintain net capital of not less than \$100,000. For the purposes of this section, the term "dealer" includes:

(A) Any broker or dealer that endorses or writes options otherwise than on a registered national securities exchange or a facility of a registered national securities association; and

(B) Any broker or dealer that effects more than ten transactions in any one calendar year for its own investment account. This section shall not apply to those persons engaging in activities described in paragraphs (a)(2)(v), (a)(2)(vi) or (a)(8) of this section, or to those persons whose underwriting activities are limited solely to acting as underwriters in best efforts or all or none underwritings in conformity with paragraph (b)(2) of § 240.15c2-4, so long as those persons engage in no other dealer activities.

Brokers or Dealers That Introduce Customer Accounts And Receive Securities

(iv) A broker or dealer shall maintain net capital of not less than \$50,000 if it introduces transactions and accounts of customers or other brokers or dealers to another registered broker or dealer that carries such accounts on a fully disclosed basis, and if the broker or dealer receives but does not hold customer or other broker or dealer securities. A broker or dealer operating under this paragraph (a)(2)(iv) of this section may participate in a firm commitment underwriting without being subject to the provisions of paragraph (a)(2)(iii) of this section, but may not enter into a commitment for the

purchase of shares related to that underwriting.

Brokers or Dealers Engaged in the Sale of Redeemable Shares of Registered Investment Companies and Certain Other Share Accounts

(v) A broker or dealer shall maintain net capital of not less than \$25,000 if it acts as a broker or dealer with respect to the purchase, sale and redemption of redeemable shares of registered investment companies or of interests or participations in an insurance company separate account directly from or to the issuer on other than a subscription way basis. A broker or dealer operating under this section may sell securities for the account of a customer to obtain funds for the immediate reinvestment in redeemable securities of registered investment companies. A broker or dealer operating under this paragraph (a)(2)(v) must promptly transmit all funds and promptly deliver all securities received in connection with its activities as a broker or dealer, and may not otherwise hold funds or securities for, or owe money or securities to, customers.

Other Brokers or Dealers

(vi) A broker or dealer that does not receive, directly or indirectly, or hold funds or securities for, or owe funds or securities to, customers and does not carry accounts of, or for, customers and does not engage in any of the activities described in paragraphs (a)(2) (i) through (v) of this section shall maintain net capital of not less than \$5,000. A broker or dealer operating under this paragraph may engage in the following dealer activities without being subject to the requirements of paragraph (a)(2)(iii) of this section:

(A) In the case of a buy order, prior to executing such customer's order, it purchases as principal the same number of shares or purchases shares to accumulate the number of shares necessary to complete the order, which shall be cleared through another registered broker or dealer or

(B) In the case of a sell order, prior to executing such customer's order, it sells as principal the same number of shares or a portion thereof, which shall be cleared through another registered broker or dealer.

(3) [Reserved].

Capital Requirements for Market Makers

(4) A broker or dealer engaged in activities as a market maker as defined in paragraph (c)(8) of this section shall maintain net capital in an amount not less than \$2,500 for each security in which it makes a market (unless a

security in which it makes a market has a market value of \$5 or less, in which event the amount of net capital shall be not less than \$1,000 for each such security) based on the average number of such markets made by such broker or dealer during the 30 days immediately preceding the computation date. Under no circumstances shall it have net capital less than that required by the provisions of paragraph (a) of this section, or be required to maintain net capital of more than \$1,000,000 unless required by paragraph (a) of this section.

(5) [Reserved].

Market Makers, Specialists and Certain Other Dealers

(6)(i) A dealer who meets the conditions of paragraph (a)(6)(ii) of this section may elect to operate under this paragraph (a)(6) and thereby not apply, except to the extent required by this paragraph (a)(6), the provisions of paragraphs (c)(2)(vi) or Appendix A (§ 240.15c3-1a) of this section to market maker and specialist transactions and, in lieu thereof, apply thereto the provisions of paragraph (a)(6)(iii) of this section.

* * * * *

Self-Clearing Options Specialists

(7)(i) A dealer who meets the conditions of paragraph (a)(7)(ii) of this section may elect to operate under this paragraph (a)(7) and thereby not apply, except to the extent required by this paragraph (a)(7), the provisions of paragraphs (c)(2)(vi), (c)(2)(x), and (c)(2)(xi) of this section or Appendix A (§ 240.15c3-1a) to this section and, in lieu thereof, apply the provisions of paragraph (a)(7)(iii) of this section.

* * * * *

Certain Additional Capital Requirements for Brokers or Dealers Engaging in Reverse Repurchase Agreements

(9) A broker or dealer shall maintain net capital in addition to the amounts required under paragraph (a) of this section in an amount equal to 10 percent of:

(i) The excess of the market value of United States Treasury Bills, Bonds and Notes subject to reverse repurchase agreements with any one party over 105 percent of the contract prices (including accrued interest) for reverse repurchase agreements with that party;

(ii) The excess of the market value of securities issued or guaranteed as to principal or interest by an agency of the United States or mortgage related securities as defined in section 3(a)(41) of the Act subject to reverse repurchase agreements with any one party over 110

percent of the contract prices (including accrued interest) for reverse repurchase agreements with that party; and

(iii) The excess of the market value of other securities subject to reverse repurchase agreements with any one party over 120 percent of the contract prices (including accrued interest) for reverse repurchase agreements with that party.

* * * * *

(c) * * *

(1) * * *

Exclusions From Aggregate Indebtedness

(xiii) Deferred tax liabilities;
(xiv) Eighty-five percent of amounts payable to a registered investment company related to fail to deliver receivables of the same quantity arising out of purchases of shares of those registered investment companies; and
(xv) Eighty-five percent of amounts payable against securities loaned for which the broker or dealer has receivables related to securities of the same class and issue and quantity that are securities borrowed by the broker or dealer.

Net Capital

(2) * * *

(i) * * *

(C) * * *

(1) The aggregate amount resulting from applying to the amount of the deductions computed in accordance with paragraph (c)(2)(vi) of this section and Appendices A and B, § 240.15c3-1a and 240.15c3-1b, the appropriate Federal and State tax rate(s) applicable to any unrealized gain on the asset on which the deduction was computed;

* * * * *

(iv)(A) * * *

Certain Unsecured and Partly Secured Receivables

(B) All unsecured advances and loans; deficits in customers' and non-customers' unsecured and partly secured notes; deficits in special omnibus accounts maintained in compliance with the requirements of 12 CFR 220.10 of Regulation T under the Securities Exchange Act of 1934, or similar accounts carried on behalf of another broker or dealer, after application of calls for margin, marks to the market or other required deposits that are outstanding 5 business days or less; deficits in customers' and non-customers' unsecured and partly secured accounts after application of calls for margin, marks to the market or other required deposits that are outstanding 5 business days or less, except deficits in cash accounts as

defined in 12 CFR 220.8 of Regulation T under the Securities Exchange Act of 1934 for which not more than one extension respecting a specified securities transaction has been requested and granted, and deducting for securities carried in any of such accounts the percentages specified in paragraph (c)(2)(vi) of this section or Appendix A (§ 240.15c3-1a); the market value of stock loaned in excess of the value of any collateral received therefor; receivables arising out of free shipments of securities (other than mutual fund redemptions) in excess of \$5,000 per shipment and all free shipments (other than mutual fund redemptions) outstanding more than 7 business days, and mutual fund redemptions outstanding more than 16 business days; any collateral deficiencies in secured demand notes as defined in Appendix D (§ 240.15c3-1d);

* * * * *

(F) * * *

(3)(i)(A) * * *

(B) The excess of the aggregate repurchase agreement deficits with any one party over 25 percent of the broker or dealer's net capital before the application of paragraph (c)(2)(vi) of this section (less any deduction taken with respect to repurchase agreements with that party under paragraph (c)(2)(iv)(F)(3)(i)(A) of this section) or, if greater;

(C) The excess of the aggregate repurchase agreement deficits over 300 percent of the broker's or dealer's net capital before the application of paragraph (c)(2)(vi) of this section.

* * * * *

Securities Haircuts

(vi) Deducting the percentages specified in paragraphs (c)(2)(vi) (A) through (M) of this section (or the deductions prescribed for securities positions set forth in Appendix A (§ 240.15c3-1a) of the market value of all securities, money market instruments or options in the proprietary or other accounts of the broker or dealer.

(A) (4) * * *

(5) In the case of a Government securities dealer that reports to the Federal Reserve System, that transacts business directly with the Federal Reserve System, and that maintains at all times a minimum net capital of at least \$50,000,000, before application of the deductions provided for in paragraph (c)(2)(vi) of this section, the deduction for a security issued or guaranteed as to principal or interest by the United States or any agency thereof shall be 75 percent of the deduction

otherwise computed under paragraph (c)(2)(vi)(A) of this section.

* * * * *

(I) [Reserved].

All Other Securities

(J) In the case of all securities or evidences of indebtedness, except those described in Appendix A, § 240.15c3-1a, which are not included in any of the percentage categories enumerated in paragraphs (c)(2)(vi) (A) through (H) of this section or paragraph (c)(2)(vi)(K)(ii) of this section, the deduction shall be 15 percent of the market value of the greater of the long or short positions and to the extent the market value of the lesser of the long or short positions exceeds 25 percent of the market value of the greater of the long or short positions, the percentage deduction on such excess shall be 15 percent of the market value of such excess. No deduction need be made in the case of:

(1) A security that is convertible into or exchangeable for another security within a period of 90 days, subject to no conditions other than the payment of money, and the other securities into which such security is convertible or for which it is exchangeable, are short in the accounts of such broker or dealer; or
(2) A security that has been called for redemption and that is redeemable within 90 days.

* * * * *

Undue Concentration

(M)(1) In the case of money market instruments, or securities of a single class or series of an issuer, including any option written, endorsed or held to purchase or sell securities of such a single class or series of an issuer (other than "exempted securities" and redeemable securities of an investment company registered pursuant to the Investment Company Act of 1940), and securities underwritten (in which case the deduction provided for herein shall be applied after 11 business days), which are long or short in the proprietary or other accounts of a broker or dealer, including securities that are collateral to secured demand notes defined in Appendix D, § 240.15c3-1d, and that have a market value of more than 10 percent of the "net capital" of a broker or dealer before the application of paragraph (c)(2)(vi) of this section or Appendix A, § 240.15c3-1a, there shall be an additional deduction from net worth and/or the Collateral Value for securities collateralizing a secured demand note defined in Appendix D, § 240.15c3-1d, equal to 50 percent of the percentage deduction otherwise provided by this paragraph (c)(2)(vi) of

this section or Appendix A, § 240.15c3-1a, on that portion of the securities position in excess of 10 percent of the "net capital" of the broker or dealer before the application of paragraph (c)(2)(vi) of this section and Appendix A, § 240.15c3-1a. In the case of securities described in paragraph (c)(2)(vi)(I), the additional deduction required by this paragraph (c)(2)(vi)(M) shall be 15 percent.

(2) This paragraph (c)(2)(vi)(M) shall apply notwithstanding any long or short position exemption provided for in paragraph (c)(2)(vi)(I) of this section (except for long or short position exemptions arising out of the first proviso to paragraph (c)(2)(vi)(I)) and the deduction on any such exempted position shall be 15 percent of that portion of the securities position in excess of 10 percent of the broker or dealer's net capital before the application of paragraph (c)(2)(vi) of this section and Appendix A, § 240.15c3-1a.

(3) This paragraph (c)(2)(vi)(M) shall be applied to an issue of equity securities only on the market value of such securities in excess of \$10,000 or the market value of 500 shares, whichever is greater, or \$25,000 in the case of a debt security.

(4) This paragraph (c)(2)(vi)(M) will be applied to an issue of municipal securities having the same security provisions, date of issue, interest rate, day, month and year of maturity only if such securities have a market value in excess of \$500,000 in bonds (\$5,000,000 in notes) or 10 percent of tentative net capital, whichever is greater, and are held in position longer than 20 business days from the date the securities are received by the syndicate manager from the issuer.

(5) Any specialist that is subject to a deduction required by this paragraph (c)(2)(vi)(M), respecting its specialty stock, that can demonstrate to the satisfaction of the Examining Authority for such broker or dealer that there is sufficient liquidity for such specialist's specialty stock and that such deduction need not be applied in the public interest for the protection of investors, may upon a proper showing to such Examining Authority have such undue concentration deduction appropriately decreased, but in no case shall the deduction prescribed in paragraph (c)(2)(vi)(I) of this section above be reduced. Each such Examining Authority shall make and preserve for a period of not less than 3 years a record of each application granted pursuant to this paragraph (c)(2)(vi)(M)(5), which shall contain a summary of the

justification for the granting of the application.

* * * * *

Open Contractual Commitments

(viii) Deducting, in the case of a broker or dealer that has open contractual commitments (other than those option positions subject to Appendix A, § 240.15c3-1a), the respective deductions as specified in paragraph (c)(2)(vi) of this section or Appendix B, § 240.15c3-1b, from the value (which shall be the market value whenever there is a market) of each net long and each net short position contemplated by any open contractual commitment in the proprietary or other accounts of the broker or dealer.

(A) The deduction for contractual commitments in those securities that are treated in paragraph (c)(2)(vi)(I) of this section shall be 30 percent unless the class and issue of the securities subject to the open contractual commitment deduction are listed for trading on a national securities exchange or are designated as NASDAQ National Market System Securities.

(B) A broker or dealer that maintains in excess of \$250,000 of net capital may add back to net worth up to \$150,000 of any deduction computed under this paragraph (c)(2)(viii)(B).

(C) The deduction with respect to any single commitment shall be reduced by the unrealized profit in such commitment, in an amount not greater than the deduction provided for by this paragraph (or increased by the unrealized loss), in such commitment, and in no event shall an unrealized profit on any closed transactions operate to increase net capital.

(ix) Deducting from the contract value of each failed to deliver contract that is outstanding five business days or longer (21 business days or longer in the case of municipal securities) the percentages of the market value of the underlying security that would be required by application of the deduction required by paragraph (c)(2)(vi) of this section. Such deduction, however, shall be increased by any excess of the contract price of the failed to deliver contract over the market value of the underlying security or reduced by any excess of the market value of the underlying security over the contract value of the failed to deliver contract, but not to exceed the amount of such deduction. The designated examining authority for the broker or dealer may, upon application of the broker or dealer, extend for a period up to 5 business days, any period herein specified when it is satisfied that the extension is warranted. The designated examining authority upon expiration of

the extension may extend for one additional period of up to 5 business days, any period herein specified when it is satisfied that the extension is warranted.

(x)(A) * * *

(2) In the case of a bona fide hedged position as defined in this paragraph (c)(2)(x)(C) involving a long position in a security, other than an option, and a short position in a call option, the deduction shall be 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of this section) of the market value of the long position reduced by any excess of the market value of the long position over the exercise value of the short option position. In no event shall such reduction operate to increase net capital.

(3) In the case of a bona fide hedged position as defined in this paragraph (c)(2)(x)(C) involving a short position in a security, other than an option, and a long position in a call option, the deduction shall be the lesser of 15 percent of the market value of the short position or the amount by which the exercise value of the long option position exceeds the market value of the short position; however, if the exercise value of the long option position does not exceed the market value of the short position, no deduction shall be applied.

(4) In the case of a bona fide hedged position as defined in this paragraph (c)(2)(x)(C) involving a short position in a security other than an option, and a short position in a put option, the deduction shall be 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of this section) of the market value of the short security position reduced by any excess of the exercise value of the short option position over the market value of the short security position. No such reduction shall operate to increase net capital.

(5) In the case of a bona fide hedged position as defined in this paragraph (c)(2)(x)(C) involving a long position in a security, other than an option, and a long position in a put option, the deduction shall be the lesser of 15 percent of the market value of such long security position or the amount by which the market value of such long security position exceeds the exercise value of the long option position. If the market value of the long security position does not exceed the exercise value of the long option position, no deduction shall be applied.

* * * * *

Promptly Transmit and Deliver

(9) A broker or dealer is deemed to "promptly transmit" all funds and to "promptly deliver" all securities within the meaning of paragraphs (a)(2)(i) and (a)(2)(v) of this section where such transmission or delivery is made no later than noon of the next business day after the receipt of such funds or securities; provided, however, that such prompt transmission or delivery shall not be required to be effected prior to the settlement date for such transaction.

Promptly Forward

(10) A broker or dealer is deemed to "promptly forward" funds or securities within the meaning of paragraph (a)(2)(i) of this section only when such forwarding occurs no later than noon of the next business day following receipt of such funds or securities.

3. § 240.15c3-1a is amended by revising paragraphs (c)(1) through (c)(5), (c)(7), (c)(9) and (c)(10) to read as follows:

§ 240.15c3-1a Options (Appendix A to 17 CFR 240.15c3-1).

* * * * *

(c) * * *

Uncovered Calls

(1) Where a broker or dealer is short a call, deducting, after the adjustment provided for in paragraph (b) of this Appendix A, 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3-1) of the current market value of the security underlying such option reduced by any excess of the exercise value of the call over the current market value of the underlying security. In no event shall the deduction provided by this paragraph be less than \$250 for each option contract for 100 shares.

Uncovered Puts

(2) Where a broker or dealer is short a put, deducting, after the adjustment provided for in paragraph (b) of this Appendix A, 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3-1) of the current market value of the security underlying the option reduced by any excess of the market value of the underlying security over the exercise value of the put. In no event shall the deduction provided by this paragraph be less than \$250 for each option contract for 100 shares.

Covered Calls

(3) Where a broker or dealer is short a call and long equivalent units of the underlying security, deducting, after the

adjustments provided for in paragraph (b) of this Appendix A, 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3-1) of the current market value of the underlying security reduced by any excess of the current market value of the underlying security over the exercise value of the call. No reduction under this paragraph shall have the effect of increasing net capital.

Covered Puts

(4) Where a broker or dealer is short a put and short equivalent units of the underlying security, deducting, after the adjustment provided for in paragraph (b) of this Appendix A, 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3-1) of the current market value of the underlying security reduced by any excess of the exercise value of the put over the market value of the underlying security. No such reduction shall have the effect of increasing net capital.

Conversion Accounts

(5) Where a broker or dealer is long equivalent units of the underlying security, long an unlisted put written or endorsed by a broker or dealer and short an unlisted call in its proprietary or other accounts, deducting 5 percent (or 50 percent of such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3-1) of the current market value of the underlying security.

* * * * *

Long Over-the-Counter Options

(7) Where a broker or dealer is long an unlisted put or call endorsed or written by a broker or dealer, deducting 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3-1) of the market value of the underlying security, not to exceed any value attributed to such option in paragraph (c)(2)(i) of § 240.15c3-1.

* * * * *

Certain Security Positions With Offsetting Options

(9) Where a broker or dealer is long a security for which it is also long a listed put (such broker or dealer may in addition be short a call), deducting, after the adjustments provided in paragraph (b) of this Appendix A, 15 percent of the market value of the long security position not to exceed the amount by which the market value of equivalent units of the long security position exceeds the exercise value of the put. If the exercise value of the put is equal to

or exceeds the market value of equivalent units of the long security position, no percentage deduction shall be applied.

(10) Where a broker or dealer is short a security for which he is also long a listed call (such broker or dealer may in addition be short a put), deducting, after the adjustments provided in paragraph (b) of this Appendix A, 15 percent of the market value of the short security position not to exceed the amount by which the exercise value of the long call exceeds the market value of equivalent units of the short security position. If the exercise value of the call is less than or equal to the market value of equivalent units of the short security position no percentage deduction shall be applied.

* * * * *

4. § 240.15c3-1c is amended by revising paragraph (b)(1), to read as follows:

§ 240.15c3-1c Consolidated Computations of Net Capital and Aggregate Indebtedness for Certain Subsidiaries and Affiliates (Appendix C to 17 CFR 240.15c3-1).

* * * * *

Required Counsel Opinions

(b)(1) If the consolidation, provided for in paragraph (a) of this section, of any such subsidiary or affiliate results in the increase of the broker's or dealers' net capital and/or the decrease of the broker's or dealer's minimum net capital requirement under paragraph (a) of § 240.15c3-1 and an opinion of counsel described in paragraph (b)(2) of this section has not been obtained, such benefits shall not be recognized in the broker's or dealer's computation required by this section.

* * * * *

5. § 240.15c3-1d is amended by revising paragraphs (a)(2)(iii), (b)(6)(iii), (b)(7), (b)(8), (b)(10)(ii)(B), (c)(2), (c)(5)(i), and (c)(5)(ii)(A) to read as follows:

§ 240.15c3-1d Satisfactory Subordination Agreements (Appendix D to 17 CFR 240.15c3-1).

* * * * *

(a)(2) * * *

(iii) The term "Collateral Value" of any securities pledged to secure a secured demand note shall mean the market value of such securities after giving effect to the percentage deductions set forth in paragraph (c)(2)(vi) of § 240.15c3-1 except for paragraph (c)(2)(vi)(J). In lieu of the deduction under (c)(2)(vi)(J), the broker or dealer shall reduce the market value

of the securities pledged to secure the secured demand note by 30 percent.

*(b)(6)***

(iii) The secured demand note agreement also may provide that, in lieu of the procedures specified in the provisions required by paragraph (b)(6)(ii) of this section, the lender with the prior written consent of the broker or dealer and the Examining Authority for the broker or dealer may reduce the unpaid principal amount of the secured demand note. After giving effect to such reduction, the aggregate indebtedness of the broker or dealer may not exceed 1000 percent of its net capital or, in the case of a broker or dealer operating pursuant to paragraph (a)(1)(ii) of § 240.15c3-1, net capital may not be less than 5 percent of aggregate debit items computed in accordance with § 240.15c3-3a, or, if registered as a futures commission merchant, 7 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), if greater. No single secured demand note shall be permitted to be reduced by more than 15 percent of its original principal amount and after such reduction no excess collateral may be withdrawn. No Examining Authority shall consent to a reduction of the principal amount of a secured demand note if, after giving effect to such reduction, net capital would be less than 120 percent of the minimum dollar amount required by § 240.15c3-1.

Permissive Prepayments

(7) A broker or dealer at its option but not at the option of the lender may, if the subordination agreement so provides, make a Payment of all or any portion of the Payment Obligation thereunder prior to the scheduled maturity date of such Payment Obligation (hereinafter referred to as a "Prepayment"), but in no event may any Prepayment be made before the expiration of one year from the date such subordination agreement became effective. This restriction shall not apply to temporary subordination agreements that comply with the provisions of paragraph (c)(5) of this Appendix D. No Prepayment shall be made, if, after giving effect thereto (and to all Payments of Payment Obligations under any other subordinated agreements then outstanding the maturity or accelerated maturities of which are scheduled to fall due within six months after the date

such Prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect of such Prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the broker or dealer, either aggregate indebtedness of the broker or dealer would exceed 1000 percent of its net capital or its net capital would be less than 120 percent of the minimum dollar amount required by § 240.15c3-1 or, in the case of a broker or dealer operating pursuant to paragraph (a)(1)(ii) of § 240.15c3-1, its net capital would be less than 5 percent of its aggregate debit items computed in accordance with § 240.15c3-3a, or if registered as a futures commission merchant, 7 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), if greater, or its net capital would be less than 120 percent of the minimum dollar amount required by paragraph (a)(1)(ii) of § 240.15c3-1. Notwithstanding the above, no Prepayment shall occur without the prior written approval of the Examining Authority for such broker or dealer.

Suspended Repayment

(8)(i) The Payment Obligation of the broker or dealer in respect of any subordination agreement shall be suspended and shall not mature if, after giving effect to Payment of such Payment Obligation (and to all Payments of Payment Obligations of such broker or dealer under any other subordination agreement(s) then outstanding that are scheduled to mature on or before such Payment Obligation) either (A) the aggregate indebtedness of the broker or dealer would exceed 1200 percent of its net capital, or in the case of a broker or dealer operating pursuant to paragraph (a)(1)(ii) of § 240.15c3-1, its net capital would be less than 5 percent of aggregate debit items computed in accordance with § 240.15c3-3a or, if registered as a futures commission merchant, 6 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account),

if greater, or (B) its net capital would be less than 120 percent of the minimum dollar amount required by § 240.15c3-1 including paragraph (a)(1)(ii), if applicable. The subordination agreement may provide that if the Payment Obligation of the broker or dealer thereunder does not mature and is suspended as a result of the requirement of this paragraph (b)(8) for a period of not less than six months, the broker or dealer shall thereupon commence the rapid and orderly liquidation of its business, but the right of the lender to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of § 240.15c3-1 and § 240.15c3-1d.

*(10)(ii)***

(B) The aggregate indebtedness of the broker or dealer exceeding 1500 percent of its net capital or, in the case of a broker or dealer that has elected to operate under paragraph (a)(1)(ii) of § 240.15c3-1, its net capital computed in accordance therewith is less than 2 percent of its aggregate debit items computed in accordance with § 240.15c3-3a or, if registered as a futures commission merchant, 4 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), if greater, throughout a period of 15 consecutive business days, commencing on the day the broker or dealer first determines and notifies the Examining Authority for the broker or dealer, or the Examining Authority or the Commission first determines and notifies the broker or dealer of such fact;

*(c)***

Notice of Maturity or Accelerated Maturity

(2) Every broker or dealer shall immediately notify the Examining Authority for such broker or dealer if, after giving effect to all Payments of Payment Obligations under subordination agreements then outstanding that are then due or mature within the following six months without reference to any projected profit or loss of the broker or dealer either the aggregate indebtedness of the broker or dealer would exceed 1200 percent of its net capital or its net capital would be less than 120 percent of the minimum

dollar amount required by § 240.15c3-1, or, in the case of a broker or dealer operating pursuant to paragraph (a)(1)(ii) of § 240.15c3-1, its net capital would be less than 5 percent of aggregate debit items computed in accordance with § 240.15c3-3a, or, if registered as a futures commission merchant, 6 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), if greater, or less than 120 percent of the minimum dollar amount required by paragraph (a)(1)(ii) of § 240.15c3-1.

* * * * *

Temporary and Revolving Subordination Agreements

(5)(i) For the purpose of enabling a broker or dealer to participate as an underwriter of securities or other extraordinary activities in compliance with the net capital requirements of § 240.15c3-1, a broker or dealer shall be permitted, on no more than three occasions in any 12 month period, to enter into a subordination agreement on a temporary basis that has a stated term of no more than 45 days from the date such subordination agreement became effective. This temporary relief shall not apply to a broker or dealer if, at such time, it is subject to any of the reporting provisions of § 240.17a-11, irrespective of its compliance with such provisions or if immediately prior to entering into such subordination agreement, either:

(A) The aggregate indebtedness of the broker or dealer exceeds 1000 percent of its net capital or its net capital is less than 120 percent of the minimum dollar amount required by § 240.15c3-1, or

(B) In the case of a broker or dealer operating pursuant to paragraph (a)(1)(ii) of § 240.15c3-1, its net capital is less than 5 percent of aggregate debits computed in accordance with § 240.15c3-1, or, if registered as a futures commission merchant, less than 7 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), if greater, or less than 120 percent of the minimum dollar amount required by paragraph (a)(1)(ii) of this section, or

(C) The amount of its then outstanding subordination agreements

exceeds the limits specified in paragraph (d) of § 240.15c3-1. Such temporary subordination agreement shall be subject to all other provisions of this Appendix D.

(ii) * * *

(A) After giving effect thereto (and to all Payments of Payment Obligations under any other subordinated agreements then outstanding, the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect of such prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the broker or dealer, either aggregate indebtedness of the broker or dealer would exceed 900 percent of its net capital or its net capital would be less than 200 percent of the minimum dollar amount required by § 240.15c3-1 or, in the case of a broker or dealer operating pursuant to paragraph (a)(1)(ii) of § 240.15c3-1, its net capital would be less than 6 percent of aggregate debit items computed in accordance with § 240.15c3-3a, or, if registered as a futures commission merchant, 10 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), if greater, or its net capital would be less than 200 percent of the minimum dollar amount required by paragraph (a)(1)(ii) of this section or

6. § 240.15c3-1e is added to read as follows:

§ 240.15c3-1e Temporary Minimum Requirements (Appendix E to 17 CFR 240.15c3-1e).

Brokers or Dealers That Carry Customer Accounts Aggregate Indebtedness Standard

(a) A broker or dealer that falls within the provisions of paragraph (a)(2)(i) of § 240.15c3-1 and computes its required net capital under § 240.15c3-1(a)(1)(i) shall maintain net capital not less than the greater of the amount computed under the paragraph (a)(1)(i) or:

- (1) \$25,000 until June 30, 1993;
- (2) \$100,000 on July 1, 1993, until December 31, 1993;
- (3) \$175,000 on January 1, 1994, until June 30, 1994; and

(4) \$250,000 on July 1, 1994.

Brokers or Dealers That Elect the Alternative Standard

(b) A broker or dealer that elects the provisions of § 240.15c3-1(a)(1)(ii) shall maintain net capital of not less than the greater of the amount computed under the paragraph (a)(1)(ii) or:

- (1) \$100,000 until June 30, 1993;
- (2) \$150,000 on July 1, 1993, until December 31, 1993;
- (3) \$200,000 on January 1, 1994, until June 30, 1994; and
- (4) \$250,000 on July 1, 1994.

Broker or Dealers That are Exempt From Securities Exchange Act Rule 15c3-3 Under Paragraph (k)(2)(i) and Dealers

(c) A broker or dealer that falls within the provisions of § 240.15c3-1(a)(2)(ii) or (iii) and computes its required net capital under § 240.15c3-1(a)(1)(i) shall maintain net capital not less than the greater of the same computed under § 240.15c3-1(a)(1)(i) or:

- (1) \$25,000 until June 30, 1993;
- (2) \$50,000 on July 1, 1993, until December 31, 1993;
- (3) \$75,000 on January 1, 1994, until June 30, 1994; and
- (4) \$100,000 on July 1, 1994.

Brokers or Dealers That Introduce Customer Accounts and Receive Securities

(d) An introducing broker that falls within the provisions of § 240.15c3-1(a)(2)(iv) and computes its required net capital under § 240.15c3-1(a)(1)(i) shall maintain net capital of not less than the greater of the amount computed under § 240.15c3-1(a)(1)(i) or:

- (1) \$5,000 until June 30, 1993;
- (2) \$20,000 on July 1, 1993, until December 31, 1993;
- (3) \$35,000 on January 1, 1994, until June 30, 1994; and
- (4) \$50,000 on July 1, 1994.

Brokers or Dealers Engaged in the Sale of Redeemable Shares of Registered Investment Companies and Certain Other Share Accounts

(e) A broker or dealer that falls within the provisions of § 240.15c3-1(a)(2)(v) and computes its required net capital under § 240.15c3-1(a)(1)(i) shall maintain net capital of not less than the greater of the amount computed under § 240.15c3-1(a)(1)(i) or:

- (1) \$2,500 until June 30, 1993;
- (2) \$10,000 on July 1, 1993, until December 31, 1993;
- (3) \$17,500 on January 1, 1994, until June 30, 1994; and
- (4) \$25,000 on July 1, 1994.

Other Brokers or Dealers

(f) A broker or dealer that falls within the provisions of § 240.15c3-1(a)(2)(vi), computes its required net capital under § 240.15c3-1(a)(1)(i) and is not otherwise subject to a \$5,000 minimum net capital requirement shall maintain net capital of not less than the greater of the amount computed under § 240.15c3-1(a)(1)(i) or:

- (1) \$2,500 until June 30, 1993;
- (2) \$3,300 on July 1, 1993, until December 31, 1993;
- (3) \$4,100 on January 1, 1994, until June 30, 1994; and
- (4) \$5,000 on July 1, 1994.

Dated: November 24, 1992.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-29031 Filed 12-1-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1204

[NHTSA Docket No. 81-12; Notice 8]

Highway Safety Program Guideline No. 17, Pupil Transportation Safety

AGENCY: National Highway Traffic Safety Administration (NHTSA), Federal Highway Administration (FHWA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This notice corrects an inconsistency between Highway Safety Program Guideline 17 and Federal motor vehicle safety standard No. 111, Rearview mirrors, which Guideline 17 incorporates by reference. This notice amends Guideline 17 to be consistent with today's amendment of Standard No. 111 by deleting unnecessary language that has the potential to be confusing. No new obligations or duties are imposed on any party as a result of this correction, since the correction merely removes obsolete provisions from the Guideline.

DATES: EFFECTIVE DATE: The amendment becomes effective December 2, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Engle, Chief, Safety Countermeasures Division, NTS-23, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-2717.

SUPPLEMENTARY INFORMATION:

On April 26, 1991, the National Highway Traffic Safety Administration (NHTSA) and the Federal Highway Administration (FHWA) published revisions to Highway Safety Program Guideline 17; Pupil Transportation Safety. (56 FR 19270) Guideline 17 contains recommendations to the States on various operational aspects of their school bus and pupil transportation safety programs, including school bus equipment such as mirror systems. (see § 1204.4(IV)(B)(1)(g)). As for mirror systems, Guideline 17 states that—

"All school buses should * * * (g) Have a system of mirrors that conforms to the school bus requirements of FMVSS No. 111, 49 CFR 571.111, and provides the seated driver a view to the rear along both sides of the bus and a view of the front bumper and the area in front of the bus. Mirrors should be positioned and adjusted such that when a rod, 30 inches long, is placed upright on the ground at any point along a traverse 1 foot forward of the forward-most point of a school bus, at least 7½ inches of the length of the rod should be visible to the driver, either by direct view or by the system of mirrors."

While Guideline 17 was being amended, NHTSA issued a proposal to determine whether to amend Federal motor vehicle safety standard No. 111, Rearview mirrors. (56 FR 20171, May 2, 1991). That NPRM proposed detailed test locations that would supersede the specific adjustment requirements in Guideline 17.

Elsewhere in today's Federal Register, the agency is publishing an amendment to FMVSS No. 111, Rearview Mirrors, with respect to the field-of-view around school buses. The notice amends the standard to require a bus driver to be able to see, either directly or through mirrors, certain specified areas in front of and along both sides of school buses. The amendment also specifies detailed performance requirements.

After reviewing Guideline 17's relationship with Standard No. 111, it is apparent that Guideline 17 should be amended to reference Standard No. 111, without any additional provisions. Accordingly, Guideline 17 is amended to state "All school buses should * * * (g) Have a system of mirrors that conforms to the school bus requirements of FMVSS No. 111, 49 CFR 571.111." The additional provisions in Guideline 17 about the driver's view, mirror positioning and adjustment, and the 30" rod test are deleted from Guideline 17.

The agency notes that in amending Standard No. 111, Guideline 17 effectively was amended as well, since Guideline 17 incorporates Standard No.

111 by reference. Nevertheless, the existence of the additional provisions in Guideline 17 are being deleted because they are without legal effect and could be confusing given the amendment to Standard No. 111.

Based on the above considerations, the agency has decided to issue this conforming amendment to clarify this situation. This amendment imposes no duties or responsibilities on any party, nor does it alter existing obligations. Instead, this amendment will simply ensure that Guideline 17 has no extraneous language that could be misinterpreted as imposing guidelines that are not actually in effect. Accordingly, the agency finds for good cause that notice and opportunity for comment on this amendment are unnecessary.

List of Subjects in 23 CFR Part 1204

Grant programs, Highway safety.

In consideration of the foregoing, NHTSA and FHWA amend 23 CFR part 1204 as follows:

PART 1204—AMENDED

1. The authority citation for 23 CFR Part 1204 continues to read as follows:

Authority: 23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50.

§ 1204.4 [Amended]

2. In § 1204.4, section (IV)(B)(1)(g) is revised to read as follows:

* * * * *

g. Have a system of mirrors that conforms to the school bus requirements of FMVSS No. 111, 49 CFR 571.111.

* * * * *

Issued on: November 24, 1992.

Marion C. Blakey,

Administrator.

Thomas D. Larson,

Administrator.

[FR Doc. 92-29052 Filed 12-1-92; 8:45 am]

BILLING CODE 4810-59-M

Coast Guard

33 CFR Part 165

[COTP St. Louis Regulation 92-09]

Safety Zone Regulation: Upper Mississippi River, Mile 90.0-103.02

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Upper Mississippi River, between Mile 90.0 and 103.0. This safety zone is needed to protect commercial traffic and private

vessels during the construction of stone filled weirs.

EFFECTIVE DATE: This regulation is effective on October 19, 1992 through December 19, 1992, between the hours of 7 a.m. and 5:30 p.m. each day.

FOR FURTHER INFORMATION CONTACT: MSTC M.G. Bryan, Captain of the Port, St. Louis, Missouri at 314-539-3823.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 533, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days after publication in the *Federal Register*. Publishing a notice of proposed rulemaking and delaying the effective date would be contrary to the public interest since immediate action is necessary to ensure the safety of vessels operating in the regulated area.

Drafting Information

The drafter of this regulation is MSTC M.G. Bryan, project officer for the Captain of the Port.

Discussion of Regulation

This regulation is required to protect commercial traffic and private vessels from hazards associated with the construction of stone fill weirs being done on the Mississippi River. The event will begin on October 19, 1992 and will conclude on December 19, 1992. Entry into this zone between 7 a.m. and 5:30 p.m. is prohibited unless authorized by the M/V AL BOB. Questions can be directed to the M/V AL BOB on VHF channel 13 and 16. Reopening broadcasts will be made by M/V AL BOB. This regulation is issued pursuant to 33 U.S.C. 1225 as set out in the authority citation for all of 33 CFR part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new section 165.T0252 is added to read as follows:

§ 165.T0252 Safety Zone: Upper Mississippi River.

(a) *Location.* The following area is a safety zone: Upper Mississippi River between mile 90.0 and 103.0.

(b) *Effective Date.* This regulation is effective on October 19, 1992 through December 19, 1992, between the hours of 7 a.m. and 5:30 p.m. each day.

(c) *Regulations.* In accordance with the general regulations in § 165.23, entry into this zone is prohibited unless authorized by the Captain of the Port or his on scene representative, the M/V AL BOB.

Dated: October 15, 1992.

Scott P. Cooper,

Commander, U.S. Coast Guard, Captain of the Port, St. Louis, Missouri.

[FR Doc. 92-29230 Filed 12-1-92; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AF99

Procedural Due Process and Appellate Rights

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning procedural due process and appellate rights. This amendment is necessary to clearly reflect a statutory requirement regarding notice of VA decisions. The intended effect of this amendment is to emphasize that notice of any VA decision affecting the payment of benefits or the granting of relief must be provided not only to the claimant, but also to his or her representative.

EFFECTIVE DATE: This amendment is effective December 2, 1992.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 5104(a) provides that when the Secretary of Veterans Affairs makes a decision affecting the provision of benefits to a claimant, a notice of that decision must be sent to the claimant and the claimant's representative. It has been a long-standing VA policy to provide a claimant's representative with a copy of each notice to the claimant affecting adjudication of a claim, which

clearly includes notice of decisions as well as requests for information, etc. (See 38 CFR 1.525(d)). We believe it is appropriate, however, to amend regulatory language at 38 CFR 3.103(b)(1), 3.103(f), and 3.105(h)(2) to clearly reflect the statutory requirement that notice of a decision affecting the provision of benefits be sent not only to the claimant, but also to the claimant's representative. This amendment is made for the sake of clarity and the convenience of the user. Additionally, the reference to part 19, subpart B in § 3.103(f) has been amended to conform with final Board of Veterans Appeals regulations published on February 3, 1992 (57 FR 4088-4130).

This amendment of 38 CFR 3.103 and 3.105 is effective the date of publication of the final rule. The Secretary finds good cause for doing so since this amendment clarifies an existing regulation based upon the plain language of the statute.

VA is issuing a final rule to amend the provisions of 38 CFR 3.103 and 3.105. Because this amendment implements the plain language of 38 U.S.C. 5104(a), publication as a proposal for public notice and comment is unnecessary.

Since a notice of proposed rulemaking is unnecessary and will not be published, this amendment is not a "rule" as defined in and made subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. This amendment will not directly affect any small entity.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of \$100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: October 6, 1992.

Anthony J. Principi,
Acting Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 105 Stat. 386; 38 U.S.C. 501(a), unless otherwise noted.

§ 3.103 [Amended]

2. In § 3.103(b)(1), in the first sentence, after the word "Claimants" add the words "and their representatives".

3. In § 3.103(f), in the first sentence, after the word "beneficiary" add the words "and his or her representative". In the parenthetical remarks after the last sentence, remove the words "part 19, subpart B" and add, in their place, the words "part 20".

§ 3.105 [Amended]

4. In § 3.105(h)(2) introductory text, in the fifth sentence, after the word "beneficiary" add the words "and his or her representative".

[FR Doc. 92-29181 Filed 12-1-92; 8:45 am]

BILLING CODE 8320-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-2

[FPMR Amendment A-50]

Payments to GSA for Supplies and Services Furnished Government Agencies

AGENCY: Office of the Chief Financial Officer, GSA.

ACTION: Final rule.

SUMMARY: This regulation establishes the authority to accumulate small dollar non-OPAC (On-Line Payment and Collection) invoices to be released for billing on a quarterly basis to the various Federal customer agencies. These billings would be released when the total charges for a single BOAC (Billed Office Address Code, i.e., customer account number) or Reimbursable Work Authorization (RWA) reach a pre-established minimum threshold. The threshold amount will vary depending on the respective billing system. The

thresholds will be determined by the appropriate GSA billing service and the Office of Finance. Any billing system electing to accumulate small dollar invoices in this manner, will notify current customers with billing flyers or by written notice to agency heads. Accounts which have not accumulated charges equal to the pre-established minimum threshold for a quarter, will defer the billing until the end of a subsequent quarter in which the threshold is attained. Recurring and open-end RWA's will bill at the end of the fiscal year for any unpaid charges regardless of amount. Non-recurring RWA's will bill upon completion of the RWA if the threshold has not been attained prior to that time.

EFFECTIVE DATE: December 2, 1992.

FOR FURTHER INFORMATION CONTACT: Ronald L. Smeltzer, (202) 501-2637.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in the *Federal Register* on June 11, 1992 (57 FR 24767) to amend 41 CFR part 101-2 to allow GSA billing offices the authority to accumulate small dollar invoices and release them for billing on a quarterly basis.

Two comments were received. One commenter indicated he could not see the value in this proposed rule as he has found that a steady monthly workload is more easily dealt with than a large quarterly billing. It was also indicated that the commenter would like to see the savings which this proposed rule would engender for GSA. A major stimulus for implementing the accumulation of small dollar invoices was the Department of the Treasury's Cash Management Review (June 26-28, 1990) of GSA's Regional Finance Division in Fort Worth, Texas. One of the recommendations from the review was that a minimum dollar amount be considered before sending a bill (GSA has a multitude of bills of small dollar amounts), and if monthly charges were below the minimum, charges could be accumulated and billings generated when the total amount reaches the threshold. Also, comments from the Department of the Treasury indicate that it costs an agency approximately \$50 to process the collection of an invoice. Consequently, we feel that the accumulation of small dollar non-OPAC invoices is a most cost-effective method. The second commenter indicated that these proposed procedures would significantly increase the processing costs for GSA's OPAC customers. It was not mentioned in the proposed rule, but these procedures will only apply to non-OPAC customers. We thank the commenter for addressing the issue of

OPAC/non-OPAC invoices and as a result we have clarified this point.

E.O. 12291, Federal Regulation

The General Services Administration has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Regulatory Flexibility Act

The General Services Administration has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 41 CFR Part 101-2

Accounting, Government procurement, Government property management.

For the reasons set out in the preamble, 41 CFR part 101-2 is amended as follows:

PART 101-2—PAYMENTS TO GSA FOR SUPPLIES AND SERVICES FURNISHED GOVERNMENT AGENCIES

1. The authority citation for 41 CFR part 101-2 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 101-2.1 Billings, Payments, and Adjustments

2. Section 101-2.102 is amended by revising paragraph (a) to read as follows:

§ 101-2.102 Billing procedures.

(a) Bills are rendered biweekly, monthly, or quarterly after the fact or in advance on approved billing forms, which are GSA Form 789, Statement, Voucher, and Schedule of Withdrawals and Credits, and Treasury TFS Form 7306, Paid Billing Statement for SIBAC Transactions (illustrated at §§ 101-2.4902-789 and 101-2.4903-7306). Certification of such bills by GSA is not required. Except for those bills which are rendered in advance: bills for

shipment from stock are rendered on the basis of drop from inventory, provided that notification of warehouse refusal or other advice of nonavailability has not been received from the depot prior to the billing date; bills for services are rendered after there is evidence of actual delivery of services; and bills for stock and nonstock direct delivery shipments are rendered based upon payment to the vendor. Non-OPAC (On-Line Payment and Collection) bills, issued on GSA Form 789, comprised of the accumulation of small dollar invoices which do not reach the predetermined threshold amount, may be issued at the end of the quarter in which the threshold is reached. Exceptions are: Recurring and open-end Reimbursable Work Authorizations (RWA's) which will bill at the end of each fiscal year for any unpaid charges whether the threshold is reached or not; and non-recurring RWA's which will bill upon completion of the RWA if the threshold is not reached prior to that time.

* * * * *

Dated: November 9, 1992.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 92-29205 Filed 12-1-92; 8:45 am]

BILLING CODE 6820-34-M

41 CFR PART 101-17

[FPMR Temp. Reg. D-76, Supp. 1]

Assignment and Utilization of Space

AGENCY: Public Buildings Service, General Services Administration.

ACTION: Temporary regulation.

SUMMARY: This supplement extends the expiration date of FPMR Temporary Regulation D-76 to August 26, 1993. D-76 provides procedures governing the assignment and utilization of space in Federal and leased facilities under the custody and control of the General Services Administration (GSA).

DATES: Effective date: December 2, 1992. Expiration Date: August 26, 1993.

ADDRESSES: Comments should be submitted to the General Services Administration, Office of Real Property Development, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Robert E. Ward, Director, Real Estate, Office of Real Property Development (202-501-4266).

SUPPLEMENTARY INFORMATION: The purpose of this regulation is to extend Temporary Regulation D-76 until such time as the Final Rule, which will supersede it, is approved for publication.

GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least cost to society.

List of Subjects in 41 CFR Part 101-17

Administrative practices and procedures, Federal buildings and facilities, Government real property management.

Authority: (Sec. 205(c), 63 Stat. 390 40 U.S.C. 486(c)).

In 41 CFR chapter 101, FPMR Temp. Reg. D-76, Supplement 1 is added to the appendix at the end of subchapter D to read as follows:

Federal Property Management Regulations

Temporary Regulation D-76 Supplement 1

TO: Heads of Federal Agencies.

SUBJECT: Assignment and Utilization of Space.

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation D-76.

2. *Effective Date.* This regulation is effective upon publication in the **Federal Register**.

3. *Expiration of change.* This supplement expires August 26, 1993.

4. *Explanation of change.* The expiration date in Temporary Regulation D-76 is revised to August 26, 1993.

Dated: November 13, 1992.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 92-29204 Filed 12-1-92; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 62

RIN 0905-AC65

National Health Service Corps Loan Repayment Program

AGENCY: Health Resources and Services Administration, HHS

ACTION: Final rule.

SUMMARY: This final rule for the National Health Service Corps (NHSC) Loan Repayment Program (LRP) removes the payment limitation, at \$ 62.25, which restricts the Secretary's loan repayments to one month in advance of service. The limitation establishes a loan repayment schedule that will just meet the interest accruing on an unpaid loan balance and barely reduce the principal. The result of this restrictive payment schedule leaves the loan repayment participant with an outstanding loan balance that is slightly less at the end of obligated service than at the beginning. Consequently, the ability to attract and retain needed health professionals to the Loan Repayment Program is lessened. The deletion of this payment limitation will allow the Department to pay lump-sum payments near the beginning of a participant's service obligation. This action will immediately reduce the loan principal, greatly reduce the amount of interest being paid on the unpaid balance, and for most obligated service contracts, completely pay off the participant's outstanding loans. It will increase the attractiveness of the program and its ability to recruit and retain health professionals, thereby increasing access to primary health services in health professional shortage areas (HPSAs) of greatest need.

EFFECTIVE DATE: This final rule will be effective December 2, 1992.

FOR FURTHER INFORMATION CONTACT: For further information on the LRP contact Ms. Rhoda Abrams, Acting Associate Bureau Director for Policy, Bureau of Health Care Delivery and Assistance (BHCDA), 5600 Fishers Lane, room 7-15, Rockville, Maryland 20857, or 301/443-2330.

SUPPLEMENTARY INFORMATION: On April 3, 1989, the Secretary published an interim rule, "National Health Service Corps Loan Repayment Program; Grants for State Loan Repayment Programs and Special Repayment Program; Interim Rule With Request for Comments," to implement certain requirements of the

"Public Health Service Amendments of 1987," which were enacted on December 1, 1987, as Public Law 100-177. The Department received no comments from the public on the one month limitation of payment in advance of service, Section 65.25. However, based on program experience, the interests and needs of the public and the LRP participants will be better served if the payment limitation is removed.

By increasing the attractiveness of the benefit package for health professionals, the LRP will be able to recruit more health professionals for the areas of greatest need. With this final rule the revised payment schedule will become available for use in the next LRP recruiting cycle.

The Secretary received eighteen public comments on other sections of the interim rule. However, because the National Health Service Corps Revitalization Amendments of 1990, Public Law 101-597, were enacted subsequent to the interim rule, and included a number of substantive changes, the Department will publish a Notice of Proposed Rulemaking that will take into account the public comments and the Revitalization Amendments. The NHSC Revitalization Amendments do not affect the payment issue.

Under the interim rule, § 62.25(a) provides: "Loan Repayments by the Secretary in advance of service will be limited to one month or less." This limitation is not mandated by statute and has had an adverse impact on the LRP's ability to recruit and retain health care professionals as mandated by statute.

The program currently pays quarterly installments toward participants' loans upon completion of 3-month increments of service. Some participants with high-interest rates and large loan balances at the start of service find that under this system the payments just meet the interest accruing on their unpaid balances and barely reduce the principal. This leaves participants owing only slightly less at the end of their service than when they began. Current participants with large, high-interest debts have voiced their disappointment over the small effect the program's quarterly installments have had in reducing their loan balances.

The Program is competing unsuccessfully with health care providers, such as large hospitals outside of HPSAs, that are offering final year medical residents lump-sum repayments of their educational loan obligations at the beginning of their employment.

The final rule, which removes the payment limitation, will permit the

program to make lump-sum payments near the start of obligated service. This new payment system will reduce more of the participants' debt for the service given and, therefore, increase the attractiveness and competitiveness of the program. Also, administrative costs to the Government will be reduced.

Maintaining the limitation in the interim rule will severely handicap the program's ability to increase the recruitment and retention of primary health care providers for the health professional shortage areas.

Paperwork Reduction Act of 1980

This final rule contains no information collection.

Regulatory Flexibility Act and Executive Order 12291

The rule affects only private individuals. Therefore, the Department of Health and Human Services has determined that this rulemaking will not significantly impact on a substantial number of small entities and does not require preparation of a regulatory flexibility analysis under the Regulatory Flexibility Act, Public Law 96-354. The availability of early lump sum payments allows the recipients to make a significant reduction in the principal of their health professions school loans, much like a prepayment on a home mortgage. Since these recipients are at the very earliest stages of the repayment schedules, the current payment method provides for little more than loan servicing without reducing the principal. By providing a mechanism to allow the recipient to quickly repay the principal, the loan repayment program becomes a more attractive option for financing a health professions education and will assist in the national goal of increasing access to health care in underserved areas.

The Department also has determined that this rule is not a "major rule" under Executive Order 12291. Thus, a regulatory impact analysis is not required because it will not: (1) Have an annual effect on the economy of costs or prices for consumers; individual industries; Federal, State or local government agencies; or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Justification for Omitting Notice of Proposed Rulemaking

Based on LRP experience, the interests and needs of the public and the

LRP participants will be better served if the final rule is published as soon as possible. By increasing the attractiveness of the LRP's benefits for health professionals, the LRP will be able to recruit more health care providers for HPSAs of greatest need.

The NHSC's extensive recruitment activity for the LRP involved advertising in medical, nursing, and physician assistant journals reaching an estimated audience of 1.5 million individuals. At the present rate, the best estimate is that the NHSC/LRP may conclude 150 agreements by the end of fiscal year 1991. However, the need for more participants in the LRP is especially acute. While several thousand practitioners are currently needed, some 530 of the over 900 current providers in high priority HPSAs are scheduled to complete their obligations this fiscal year and less than 100 NHSC Scholarship Program obligors are scheduled to begin service. While the balance of the fiscal year 1991 funds will be used for the NHSC Scholarship Program, these scholars will not be providing service to priority HPSA populations until 1995 at the earliest. Consequently, the importance of maximizing recruitment to the NHSC/LRP cannot be overstated.

Therefore, the Department has determined that delaying this change for additional public comment would be contrary to the public interest.

List of Subjects in 42 CFR Part 62

Health professions, Loan programs—Health, Grant programs—health, Scholarships and fellowships.

Dated: August 15, 1991.

James O. Mason,
Assistant Secretary for Health.

Approved: December 12, 1991.

Louis W. Sullivan,
Secretary.

Editorial Note: This document was received in the Office of the Federal Register on November 25, 1992.

For the reasons set out in the preamble, 42 CFR 62.25 is amended as follows.

PART 62—NATIONAL HEALTH SERVICE CORPS SCHOLARSHIP AND LOAN REPAYMENT PROGRAMS

Subpart B—National Health Service Corps Loan Repayment Program

1. The authority citation for Subpart B continues to read as follows:

Authority: Sec. 215 of the Public Health Service Act 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); Sec. 204, Pub. L. 100-177, 101 Stat. 995.

§62.25 [Amended]

2. Section 62.25(a) is amended by removing the second sentence, "Loan repayments by the Secretary in advance of service will be limited to one month or less."

[FR Doc. 92-29177 Filed 12-1-92; 8:45 am]

BILLING CODE 4160-17-M

Health Care Financing Administration**42 CFR Parts 400, 401, and 405**

[OBA-016-FC]

RIN 0938-

**Medicare and Medicaid Programs;
Approved Information Collection
Requirements and HCFA's Claims
Collection Authority**

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule updates our display of control numbers assigned by the Office of Management and Budget (OMB) to approved "collection of information" requirements contained in regulations governing the Medicare and Medicaid programs. In addition, it incorporates a technical change to our regulations to reflect increased agency authority under the Federal Claims Collection Act, 31 U.S.C. 3711 et seq.

This rule is issued in accordance with OMB regulations concerning approved collections of information and to conform to changes made by Public Law 101-552.

DATES: *Effective date:* These regulations are effective December 2, 1992.

Comment date: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on January 4, 1993.

ADDRESSES: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: OBA-016-FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following locations:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, or
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Due to staffing and resource limitations, we cannot accept facsimile transmissions. In commenting, please refer to OBA-016-FC. Comments will

be available for public inspection as they are received, beginning approximately three weeks after publication, in room 309-G of the Department's office at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m., (202) 690-7890.

FOR FURTHER INFORMATION CONTACT: Shirley Raum, 410-966-1999 (For Information Collection Requirements). Gerald M. Hankin, 410-966-5574 (For Claims Collection Authority).

SUPPLEMENTARY INFORMATION:**I. Background****A. Information Collection Requirements**

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), Federal agencies are required to obtain Office of Management and Budget (OMB) approval of "collection of information" requirements that are contained in any regulations published by the agencies. To implement provisions of this act, OMB has established regulations under part 1320 of title 5 of the Code of Federal Regulations (CFR). The OMB regulations require Federal agencies (1) to notify the public that a collection of information requirement has been approved by OMB by issuing a notice in the **Federal Register**, and (2) to display the control number assigned by OMB after approval of the requirement, as part of the agency's regulations text.

To comply with the OMB requirement that HCFA include in its regulations the OMB control numbers assigned, and as a means of notifying the public that the information collection requirements have been approved, we have established a general regulation under 42 CFR 400.310 to display valid OMB control numbers and applicable regulation sections. We update this regulation routinely to add the most recent OMB control numbers or to delete entries no longer in effect.

B. Claims Collection Authority

Under the Federal Claims Collection Act (FCCA) (31 U.S.C. 3711 et seq.) the Secretary is given the authority to collect claims in any amount and to compromise, suspend, or terminate collection action on claims under certain dollar limits. The Secretary refers claims over the relevant limits to the General Accounting Office or the Department of Justice for further collection action. Our regulations setting forth claims collection standards and procedures under the FCCA are found at 42 CFR part 401, subpart F, and part 405, subpart C. Our regulations at

42 CFR 401.601 (b) and (c), and 405.374(c) reflect the FCCA dollar limits.

On November 15, 1990, the Administrative Dispute Resolution Act (Pub. L. 101-552) was enacted. The Administrative Dispute Resolution Act increased the dollar limits relating to Federal agencies' authority under regulations for compromising and suspending or terminating collection action on claims, making it necessary to amend our regulations to reflect the new limits.

II. Provisions of These Regulations**A. Information Collection Requirements**

As noted earlier, under 5 CFR 1320.14, we submit for OMB approval information collection requirements that we identify in existing regulations either because they have not been previously approved or because a prior approval has expired. After the approval is obtained, we publish in the **Federal Register** the control numbers for the sections approved or reapproved. In this manner, we publish control numbers for all our regulation sections that have OMB approved information collection requirements, and also to update reapproved items. Section 400.310 was last updated May 16, 1989, (See 54 FR 21066). We are revising our table at § 400.310 to bring it into conformance with currently applicable OMB approval numbers.

B. Claims Collection Authority

Our current regulation at 42 CFR 401.601(b), reflects that the Administrator of HCFA has FCCA authority, with respect to functions delegated to HCFA by the Secretary of HHS, to recover claims in any amount, and to compromise, suspend, and terminate collection action on all claims for money or property that do not exceed \$20,000, excluding interest. In addition, current § 405.374, which contains requirements and procedures for the Administrator to follow for the compromise, suspension or termination of collection action on claims for overpayments against a provider, physician or other supplier of services under the Medicare program, repeats the \$20,000 FCCA amount. This was the applicable limitation on agency authority under the FCCA prior to November 15, 1990.

On November 15, 1990, section 8(b) of Public Law 101-552 amended 31 U.S.C. 3711 to increase Federal agencies' authority under regulations to compromise, suspend, or terminate collection action on claims to \$100,000 (exclusive of interest) or such higher

amount as the Attorney General may from time to time prescribe. We are revising our regulations at 42 CFR 401.601 and 405.374 to reflect the "\$100,000 or higher amount as the Attorney General may from time to time prescribe" in 31 U.S.C. 3711, as amended.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

We usually publish a general notice of proposed rulemaking in the Federal Register and afford prior public comments on proposed rules. Such notice must include a statement of the time, place, and nature of rulemaking proceedings, reference to the legal authority under which the rule is proposed, and the terms of substance of the proposed rule or a description of the subjects and issues involved. In addition, section 1871 of the Social Security Act generally requires a 60 day public comment period. However, these requirements do not apply when an agency finds good cause that such a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reason in the rules issued.

This regulation and technical change update our display of OMB control numbers for approved collection of information requirements contained in HCFA regulations text. The Department routinely publishes a notice in the Federal Register when an information collection requirements clearance request identified in a rule or notice is submitted to OMB, and the public is offered an opportunity to comment. It would be duplicative and provide an unnecessary delay to solicit comments on this display of approved numbers.

With respect to increasing the limit for compromising and suspending or terminating collection action on claims, as noted earlier, this rule merely conforms our rules to properly reflect explicit statutory provisions which are clear on their face and which we are not interpreting in any way. The changes of Public Law 101-552 were effective November 15, 1990. Without these changes, our regulation limitations would appear to conflict with the FCCA, possibly confusing those who rely on our regulations. Moreover, these changes are procedural rather than substantive, in that they merely update the dollar limits up to which HCFA is authorized to resolve claims.

For all of the above reasons, we find good cause to waive both notice and comment rulemaking procedure and a delay in the effective date as impracticable, unnecessary and contrary

to the public interest. Under these circumstances publication of the correct up-to-date rules without further delay best serves those governed by these regulations.

IV. Impact Analysis

As noted above, this regulation is technical in nature and merely updates the display of OMB control numbers of approved collection of information requirements contained in HCFA regulations and increases the authority of the Administrator to compromise, suspend or terminate collection action on claims for money or property from \$20,000 to \$100,000 or such higher amount as the Attorney General may from time to time prescribe, exclusive of interest. Therefore, the Secretary has determined that this document does not meet criteria for a major rule as defined in section 1(b) of Executive Order 12291. The Secretary also certifies, consistent with the Regulatory Flexibility Act, that this document would not have a significant economic impact on a substantial number of small entities. In addition, we are not preparing a rural impact analysis as required by section 1102(b) of the Act since we have determined, and the Secretary certifies, that this rule will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

V. Response to Public Comments

Because of the large volume of public comments that we usually receive on rules, we cannot acknowledge or respond to them individually. However, we will address all public comments on this document received by the date and time specified in the DATES section of this preamble in any subsequent final regulations.

List of Subjects

42 CFR Part 400

Grant program-health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 401

Claims, Freedom of information, Health facilities, Medicare, Privacy.

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping, Rural areas, X-rays.

42 CFR Chapter IV, Subchapter A is amended as set forth below.

PART 400—INTRODUCTION; DEFINITIONS

Subpart C—OMB Control Numbers for Approved Collections of Information

A. Part 400, Subpart C is amended as follows:

1. The authority citation for part 400 continues to read as follows:

Authority: Sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

2. Section 400.310 is revised to read as follows:

§ 400.310 Display of currently valid OMB control numbers.

Sections in 42 CFR that contain collections of information	Current OMB control numbers
405.481	0938-0285
405.552	0938-0285
405.1221, 405.1229	0938-0365
405.1716, 405.1721, 405.1722, 405.1724, 405.1725, 405.1726, 405.1733, 405.1736, 405.1737	0938-0386
405.2112, 405.2123, 405.2134, 405.2136, 405.2137, 405.2138, 405.2139, 405.2140, 405.2171	0938-0386
410.105	0938-0267
411.25, 411.32	0938-0564
411.54	0938-0558
411.65	0938-0564
411.404, 411.406	0938-0465
411.408	0938-0566
412.230, 412.232, 412.234, 412.236, 412.254, 412.260, 412.266, 412.278	0938-0573
416.47	0938-0266
417.107	0938-0472
418.22, 418.24, 418.28, 418.56, 418.58, 418.70, 418.74	0938-0302
418.83	0938-0475
418.96, 418.100	0938-0302
421.117	0938-0542
424.22	0938-0489
424.5, 424.7, 424.20	0938-0454
431.17, 431.306	0938-0467
431.50, 431.52, 431.55, 431.625, 431.800	0938-0247
432.50	0938-0459
433.36, 433.37, 433.135	0938-0247
433.139	0938-0459, 0938-0554, and 0938-0555
435.1, 435.910, 435.919, 435.920, 435.940, 435.945, 435.948, 435.952, 435.953, 435.955, 435.960, 435.965, 435.1003, 441.11, 441.15, 441.20	0938-0247
441.56, 441.58, 441.60, 441.61	0938-0354
441.303	0938-0272
447.31	0938-0267
447.45, 447.50, 447.51, 447.52	0938-0247
447.53	0938-0429
447.55	0938-0247
447.253	0938-0556
447.255	0938-0193
447.302, 447.331, 447.332, 447.333, 456.80	0938-0247
462.102, 462.103	0938-0526
473.18, 473.34, 473.36, 473.42	0938-0443
476.104, 476.105, 476.116, 476.134	0938-0426
482.12, 482.22, 482.27, 482.30, 482.41, 482.53, 482.56, 482.57, 482.60, 482.62	0938-0328

Sections in 42 CFR that contain collections of information	Current OMB control numbers
484.1, 484.2, 484.10, 484.12, 484.16-484.34, 484.48, 484.52	0938-0365
489.20	0938-0564
491.9, 491.10	0938-0334
493.35-493.63	0938-0612
493.801-493.1285	0938-0612
493.1425	0938-0612
493.1701-493.1721	0938-0612
493.1775-493.1780	0938-0612
493.2001	0938-0612

PART 401—GENERAL ADMINISTRATIVE REQUIREMENTS

Subpart F—Claims Collection and Compromise

B. Part 401, subpart F, is amended as follows:

1. The authority citation for part 401, subpart F continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 31 U.S.C. 3711.

2. In § 401.601, paragraphs (b) and (c) are revised to read as follows:

§ 401.601 Basis and scope.

(b) *Scope.* Except as provided in paragraphs (c) through (f) of this section, the regulations in this subpart describe HCFA's procedures and standards for the collection of claims in any amount, and the compromise of, or the suspension or termination of collection action on, all claims for money or property that do not exceed \$100,000 or such higher amount as the Attorney General may from time to time prescribe, exclusive of interest, arising under any functions delegated to HCFA by the Secretary.

(c) *Amount of claim.* HCFA refers all claims that exceed \$100,000 or such higher amount as the Attorney General may from time to time prescribe, exclusive of interest, to the Department of Justice or the General Accounting Office for the compromise of claims, or the suspension or termination of collection action.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart C—Recovery of Overpayments, and Suspension of Payment

C. Part 405, subpart C is amended as follows:

1. The authority citation for part 405, subpart C continues to read as follows:

1. The authority citation for part 405, subpart C continues to read as follows:

Authority: Secs. 1102, 1815, 1833, 1842, 1866, 1870, 1871, and 1879 of the Social Security Act; 42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395cc, 1395gg, 1395hh, and 1395pp. and 31 U.S.C. 3711.

2. In § 405.374, paragraph (c) is revised to read as follows:

§ 405.374 Collection and compromise of claims for overpayments.

(c) *Basic conditions.* A claim for recovery of Medicare overpayments against a debtor may be compromised, or collection action on it may be suspended or terminated, by the Health Care Financing Administration (HCFA) if:

- (1) The claim does not exceed \$100,000, or such higher amount as the Attorney General may from time to time prescribe, exclusive of interest; and
- (2) There is no indication of fraud, the filing of a false claim, or misrepresentation on the part of the debtor or any director, partner, manager, or other party having an interest in the claim.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare Hospital Insurance and No. 93.774, Supplementary Medical Insurance.)

Dated: September 8, 1992.

William Toby, Jr.

Acting Deputy Administrator, Health Care Financing Administration.

Approved: November 2, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-29098 Filed 12-1-92; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 86-10; FCC 92-521]

Provision of Access for 800 Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted an Order that delayed until May 1, 1993 the March 1993 deadline for mandatory 800 data base access, and ordered the local exchange carriers to defer until January 1993 further switch conversions that would route 800 traffic to the data base for a six-digit NXX screening. The Commission found that such action would be prudent in light of the strict

schedule required to meet the March 1993 deadline, and parties' concerns about possible disruption of 800 service during the fourth quarter of 1992.

EFFECTIVE DATE: Decisions in this Order were effective November 23, 1992.

FOR FURTHER INFORMATION CONTACT:

Gary Phillips, (202) 632-4048, or Suzanne Tetreault, (202) 632-6374.

SUPPLEMENTARY INFORMATION:

This is a summary of the Commission's Order, FCC 92-521, adopted and released November 20, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422.

Summary of the Order

1. 800 service is an interexchange service in which subscribers agree in advance to pay for all calls made to them using a predesignated 800 number. Local exchange carriers (LECs) must handle originating 800 access differently from originating access for ordinary interexchange calls because they must route 800 calls to the interchange carrier (IXC) selected by the 800 service subscriber (the called party), rather than the IXC presubscribed to the originating line or chosen by the calling party. LECs currently provide originating 800 access service through the "NXX" screening methodology, which identifies the IXC by reading the three digits (the NXX digits) that immediately follow the 800 prefix. Because the NXX system identifies the 800 carrier by the NXX digits, this system requires that each NXX be assigned to a particular carrier, and subscribers cannot change carriers without changing their 800 number. LECs are currently implementing a new "data base" system of 800 access. This data base system will allow the LECs to use the entire 800 number, rather than just the NXX digits, to identify the 800 carrier. This system, therefore, provides for "number portability," allowing an 800 subscriber to use any carrier with any 800 number.

2. In August 1991, the Commission established revised access time standards for the implementation of the 800 data base system, and required the Bell Operating Companies and GTE to meet those standards by March 4, 1993.¹

¹ See Provision of Access for 800 Service, Memorandum Opinion and Order on

In preparation for implementation of mandatory data base access, the LECs plan to test their data base systems by using them for six-digit NXX screening of 800 traffic.²

3. On September 2, 1992, the Ad Hoc Telecommunications Users Committee filed a Petition for Expedited Declaratory Ruling, requesting that the Commission rule that LECs may not use the 800 data base for six-digit NXX screening in order to route 800 traffic to IXCs during the transition to mandatory data base access if access times would exceed the standards set forth in the Reconsideration Order. Ad Hoc also argued that the public would be best served if the use of 800 data base technology to route traffic did not begin until the first quarter of 1993.

4. On September 24, 1992, the Financial Services Providers, representing the California Bankers Clearing House Association, New York Clearing House Association, VISA U.S.A., Inc. and MasterCard International, Incorporated, filed a Petition for Expedited Action requesting a three-month delay in the March 4, 1993, deadline for implementation of mandatory data base access.

5. The Commission noted that in the fourteen months since the Reconsideration Order was released, substantial progress had been made toward implementing the 800 data base access system, but that SS7 interconnection activity in a few LEC regions was somewhat behind schedule. The Commission found that those LECs would have to proceed under extremely tight deadlines, with little or no tolerance for error or delay, in order to effect a seamless transition to 800 data base service by March 1993. The Commission concluded that under the circumstances, a brief extension of the

deadline for mandatory data base access, from March 4, 1993, to May 1, 1993, was prudent. The Commission also ordered the local exchange carriers to defer further conversions to six-digit data base screening until January 1993.

6. The Commission also denied the request of Ad Hoc, endorsed by the Financial Services Providers, that the LECs be prohibited from undertaking any 800 data base routing during the implementation period if the access time standards established in the Access Time Waiver Orders would be exceeded.

Ordering Clauses

7. Accordingly, pursuant to the authority contained in 47 U.S.C. 151, 154 (i) and (j), 201-205, and 218, it is ordered that the Petition for Expedited Declaratory Ruling filed September 1, 1992 by the Ad Hoc Telecommunications Committee and the Petition for Expedited Action filed September 24, 1992, by the Financial Service Providers are hereby granted to the extent described in this order and are otherwise denied.

8. It is further ordered that the provisions in this Order will be effective November 23, 1992.³

List of Subjects in 47 CFR Part 69

Communications common carriers; Telephone.

Federal Communications Commission.

William F. Canton,

Acting Secretary.

[FR Doc. 92-29159 Filed 12-1-92, 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-172; RM-6894]

Radio Broadcasting Services; Castle Rock, Colorado Springs, Frisco, and Salida, Colorado, and Raton, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a counterproposal filed in response to the Notice of Proposed Rule Making in this proceeding to upgrade FM channels at Castle Rock and Salida, CO, and Raton, NM, and to modify existing facilities as

set forth *infra* (see **SUPPLEMENTARY INFORMATION**). See 54 FR 28077, July 5, 1989. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 8, 1993.

FOR FURTHER INFORMATION CONTACT:

Andrew J. Rhodes, Mass Media Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-172, adopted October 30, 1992, and released November 25, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

The Commission, at the request of Century Broadcasting Corporation, licensee of Station KYBG-FM, Castle Rock, CO, substitutes Channel 221C2 for Channel 221A at Castle Rock and modifies the license for Station KYBG-FM accordingly. To accommodate this upgrade, the Commission substituted Channel 230A for Channel 221A at Frisco, CO; Channel 222C3 for Channel 221A at Salida, CO; Channel 232C for Channel 230C at Colorado Springs, CO; and Channel 229C2 for Channel 232A at Raton, NM. The licenses for Station KYSL(FM), Frisco, Station KVRH-FM, Salida, Station KILO-FM, Colorado Springs, and Station KRTN-FM, Raton, were modified to specify operation on the substituted channels. The Commission also denied the objections of Stations KYSL(FM) and KILO-FM and required that they change channels. The coordinates for Channel 221C2 at Castle Rock are 39-24-57 and 105-10-02. The coordinates for Channel 222C3 at Salida are 38-30-26 and 106-01-22. The coordinates for Channel 229C2 at Raton are 36-41-01 and 104-24-49. The coordinates for Channel 230A at Frisco are 39-33-22 and 106-06-53. The coordinates for Channel 232C at Colorado Springs are 38-44-44 and 104-51-43.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended

Reconsideration and Second Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 5421 (1991) 56 FR 51666 October 1991 (Reconsideration Order) "Access time" as defined in the Reconsideration Order is the time that begins when the caller completes dialing an 800 call and ends when the call is delivered by the originating local exchange carrier (LEC) to an interexchange carrier (IXC).

Subsequently, the Common Carrier Bureau granted limited waivers of the March 1993 access time standard to each BOC and GTE. Those waivers, however, did not affect the March 1993 deadline. See Provision of Access for 800 Service, CC Docket No. 86-10, 7 FCC Rcd 4969 (Ameritech); 7 FCC Rcd 4973 (Bell Atlantic); 7 FCC Rcd 5014 (NYNEX); 7 FCC Rcd 5019 (Southwestern Bell); 7 FCC Rcd 5035 (BellSouth); 7 FCC Rcd 5039 (GTE); 7 FCC Rcd 5042 (Pacific); 7 FCC Rcd 5046 (United); 7 FCC Rcd 5050 (US West) (1992) (the "Access Time Waiver Orders").

² Such six-digit NXX screening would not allow for number portability, which will be possible only after the conversion to data base access is completed. Rather, it will simply conduct NXX screening at the data base instead of at the LEC switches.

³ The effective date of a rule may be made less than 30 days from publication in the Federal Register where good cause exists. See 5 U.S.C. 553(d)(3). In order to implement expeditiously our requirement that the LECs defer until 1993 any further switch conversions that would route 800 traffic to the data base for six-digit NXX screening, we find good cause to make this order effective three days after its release.

by removing Channel 221A and adding Channel 221C2 at Castle Rock, by removing Channel 230C and adding Channel 232C at Colorado Springs, by removing Channel 221A and adding Channel 230A at Frisco, and by removing Channel 221A and adding Channel 222C3 at Salida.

3. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 232A and adding Channel 229C2 at Raton.

Federal Communications Commission.
Michael C. Ruger,
Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.

[FR Doc. 92-29157 Filed 12-1-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 80

[PR Docket No. 91-293; FCC 92-355]

Use of Facsimile and Data Emissions on Marine Public Correspondence Channels in the 156-162 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document amends the Federal Register summary of the Report and Order, 57 FR 43406 (September 21, 1992) to include a statement concerning compliance with the Regulatory Flexibility Act of 1980.

EFFECTIVE DATE: October 21, 1992.

FOR FURTHER INFORMATION CONTACT: George Dillon, Aviation and Marine Branch, Private Radio Bureau, Federal Communications Commission, 2025 M St., NW., 1700C2, Washington, DC 20554; or telephone (202) 632-7175.

SUPPLEMENTARY INFORMATION: As published, the summary of the Report and Order did not contain a statement concerning compliance with the Regulatory Flexibility Act of 1980. It may have, therefore, been unclear what effect the actions taken in the proceeding have on small businesses. Accordingly, in FR Doc. 92-22745, 57 FR 43406 (September 21, 1992), as part of the **SUPPLEMENTARY INFORMATION** the document is amended to include a statement regarding compliance with the Regulatory Flexibility Act of 1980 to read as follows:

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis was prepared for the Notice of Proposed Rule Making in this proceeding. FR Docket 91-293, 56 FR 56955 (November 7, 1991), but was not included in the document's Federal Register Summary. In summary, the Analysis certified that

the Regulatory Flexibility Act of 1980 does not apply to this rule making proceeding because the promulgation of the proposed rules would not have a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. Although these proposed rules would allow the maritime community greater flexibility in the provision of additional forms of communications, e.g. facsimile and data, and may result in increased expenditures for equipment, such additional expenditures would be optional and would not constitute a significant economic impact on a substantial number of small business entities. None of the final rules adopted in this Report and Order modify the effect this proceeding has on small businesses and it is, therefore, unnecessary for us to modify our Regulatory Flexibility Analysis. The complete text of the Notice of Proposed Rule Making, including the Regulatory Flexibility Analysis, is available for inspection and copying during normal business hours in the FAA Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The full text also may be purchased from the Commission's copy contractor: Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036. DCC's FAX number is (202) 296-3780.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92-29160 Filed 12-1-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89-26; Notice 3]

RIN 2127-AD24

Federal Motor Vehicle Safety Standards; Convex Cross View Mirrors on School Buses

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends Federal motor vehicle safety standard No. 111, Rearview Mirrors, with respect to the field-of-view around school buses. The notice amends the standard to require a bus driver to be able to see, either directly or through mirrors, certain specified areas in front of and along

both sides of school buses; to specify certain criteria for convex cross view mirrors; and to establish test conditions designed to ensure that the image of an object is sufficiently clear. The amendments will improve the view around stopped school buses, thus reducing the risk of school buses striking student pedestrians.

DATES: *Effective Date:* The amendments become effective December 2, 1993.

Petitions for reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than January 4, 1993.

ADDRESS: Any petition for reconsideration should refer to the docket and notice number set forth in the heading of this notice and be submitted to: Administrator, NHTSA, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Breslin, NRM-10, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366-0842.

SUPPLEMENTARY INFORMATION:

Outline

- I. Background
- II. Previous Agency Action
 - A. Advance Notice of Proposed Rulemaking
 - B. Notice of Proposed Rulemaking
- III. Agency Determination
 - A. General Considerations
 - B. Field-of-view requirements
 - C. Test Cylinders
 1. Cylinder Placement
 2. Cylinder Dimensions
 3. Cylinder Color
 - D. School Bus Mirror Systems
 1. General
 2. Driving Mirrors—"System A" Mirrors
 3. Convex cross view mirrors—"System B" Mirrors
 - a. General
 - b. Accommodation distances
 - c. Discontinuities in a mirror surface's slope
 - d. Mirror supports and adjustment
 - e. Informational label on using cross view mirrors for driving purposes
 - f. Performance requirements for image clarity
 - g. Image elongation
 - E. Testing procedures
 1. General
 2. Testing reference point 25th percentile female
 3. Mirror adjustment during testing
 4. Camera testing points
 - F. Miscellaneous considerations
 1. Certification
 2. Retrofitting
 3. Applying requirements to buses other than school buses
 4. Heated mirrors
 5. Maximum permissible number of mirrors

- 6. Blind spots
- 7. Glare from mirrors
- 8. Non-mirror systems
- G. Costs
- H. Leadtime requirements
- IV Rulemaking Analyses and Notices
 - A. Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures
 - B. Regulatory Flexibility Act
 - C. Executive Order 12612 (Federalism)
 - D. National Environmental Policy Act

I. Background

School buses provide an extremely safe form of transportation. On a vehicle-mile basis, school buses are about four times safer than passenger cars. Despite this outstanding safety record, injuries and fatalities do occur, with most of them occurring to pedestrians outside the school bus. According to the May 1989 report by the National Academy of Sciences (NAS), "Improving School Bus Safety," an average of 38 pedestrians are killed each year in school bus-related incidents. Of these 38 pedestrian fatalities, an average of 26 result from students being struck by their own school bus and 12 result from being struck by another vehicle. The NAS report also estimated that 283 children suffer mostly minor injuries, when they are struck by their own bus. The NAS report concluded that since children are at greater risk of being killed in school bus loading zones (i.e., boarding and leaving the bus) than on board school buses, "a larger share of the school bus safety effort should be directed to [improving the safety of] bus stops and loading zones."

NAS accordingly made two specific recommendations to NHTSA. First, to reduce the number of students who are struck by vehicles illegally passing a stopped school bus, NAS recommended the establishment of a Federal motor vehicle safety standard requiring the installation of stop signal arms on all new school buses. (The agency has published Federal motor vehicle safety standard 131, "School Bus Pedestrian Safety Devices," which becomes effective for all new school buses produced on or after September 1, 1992. 56 FR 20363, May 3, 1991). Second, to reduce the number of children who are struck by their own school bus, NAS recommended that NHTSA "reexamine its standards for cross view mirrors to determine whether current specifications can be modified to give the driver a better view of the areas in front of and immediately beside the bus."

Federal motor vehicle safety standard No. 111, Rearview Mirrors, (49 CFR 571.111) currently requires each school bus that is not a forward control vehicle,

i.e., a transit style bus, to have an outside cross view mirror of a specified size and shape (S9.2), "mounted so as to provide the driver a view of the front bumper and the area in front of the bus" (S9.2(b)). The standard also requires each school bus to have an outside rearview mirror of unit magnification (i.e., flat mirror) on each side of the bus, to provide the driver with a view to the rear along both sides of the bus (S9.1). In addition to meeting the requirements in Standard No. 111, school buses are required by nearly every State to be equipped with additional mirrors, particularly cross view mirrors.

As noted earlier, an average of 26 students are killed each year and 283 are injured each year after being struck by their own school bus. These incidents are rare. Nevertheless, the potential for such tragedies is actually quite large because every time a student gets on or off a school bus, there is a chance that the driver may not see that student in the proximity of the bus. According to the 1989 NAS report, of the 26 students killed as pedestrians each year "two-thirds are struck by the front of the bus and one-third by the rear of the bus, usually the rear wheels." A review of specific incidents reveals that the fatalities occurred because the driver did not see the child in front of or to the side of the bus. In many cases in which the child was struck by the bus's rear wheels, the bus had already left the bus stop. In these cases, the children were typically running after the moving bus and fell under the rear wheels. Such incidents cannot be totally avoided through changes to the mirror requirements, since driver error may be a significant cause of many such incidents. In addition, once the school bus is moving, the driver must focus on other driving actions in addition to looking into the mirror systems to check for students around the outside of the bus. However, to reduce the likelihood of students being struck by their own bus in the school bus loading zone, the agency has conducted this rulemaking to improve the means available for the school bus driver to detect their presence around the stopped bus.

The Kansas Department of Transportation conducts an annual nationwide "School Bus Loading and Unloading Survey" which reviews every school bus pedestrian fatality. This study confirms that a significant, although decreasing, number of pedestrians are killed by school buses. The Kansas data indicate that the number of pupils killed nationwide in school bus loading zones was 45 in 1985, 42 in 1986, 32 in 1987, 16 in 1988, 17 in 1989, and 18 in 1990. The agency

believes that the decrease in the number of school bus loading zone fatalities is due to a combination of factors, including the use of more and better mirrors, the increased use of stop signal arms, and improved school bus driver and student training. Despite this trend, this type of incident remains the most common way students are killed in school bus-related incidents. Therefore, the agency has conducted this rulemaking to upgrade Standard No. 111's mirror requirements to reduce further the potential for fatalities and injuries to students by school buses.

II. Previous Agency Action

A. Advance Notice of Proposed Rulemaking

On December 17, 1989, NHTSA published an Advance Notice of Proposed Rulemaking (ANPRM) announcing the agency's interest in measures designed to prevent children from being struck by school buses during and after loading and unloading operations. 54 FR 53127. The ANPRM asked questions about pedestrian safety around school buses to assist the agency in deciding whether to pursue rulemaking on cross view mirror systems and other devices designed to protect pedestrians from being struck by the school bus (e.g., crossing control arms, sensors, or video monitors). Among the issues presented were: (1) The safety need for amending the mirror requirements or for requiring additional equipment such as crossing control arms; (2) the need to develop performance requirements to ensure that a driver sees or is otherwise aware of pedestrians in school bus loading zones; (3) the costs of requiring different types of or additional mirror systems and of requiring other types of equipment; and (4) the potential impact of new requirements on school bus users currently in compliance with FMVSS No. 111 and on current State laws that would differ from the Federal requirements that might be proposed.

The agency received comments from State and local governmental organizations, school bus manufacturers, mirror and other equipment manufacturers, associations, and individuals. The commenters generally agreed that measures should be taken to reduce the number of children struck by school buses and to improve the view of school bus drivers around the school bus while it is in the school bus loading zone. Commenters also addressed other issues raised in the ANPRM, including the need for devices other than mirror systems for increasing school bus drivers' awareness of

children outside of school buses, the benefits from training programs, and the costs of the equipment addressed in the ANPRM.

B. Notice of Proposed Rulemaking

Based on the comments received to the ANPRM and the results of NHTSA research conducted by the Vehicle Research and Test Center (VRTC) on school bus mirror performance ("Ergonomic Research on School Bus Cross View Mirror Systems" DOT-HS-807-676, August 1990), the agency published a Notice of Proposed Rulemaking (NPRM) in the *Federal Register*, 56 FR 20171, May 2, 1991. The agency had two primary objectives in publishing the NPRM: (1) To improve the capability of school bus drivers to see specified critical areas in front of and alongside of school buses in school bus loading zones, and (2) to propose a performance-oriented standard that would replace the existing requirements that prevented certain new convex cross view mirror designs. The NPRM proposed specific performance requirements to Standard No. 111 to ensure that a seated school bus driver could see, either directly or through mirrors, certain specified areas in front of and alongside of a school bus. The proposal specified certain criteria for convex cross view mirrors and proposed establishing test conditions to ensure that the image of an object in a mirror had sufficient clarity. The NPRM also announced the agency's decision not to proceed further with rulemaking to require school buses to be equipped with other devices such as crossing control arms, sensors, or video monitors.

The agency received comments in response to the NPRM from State and local organizations, school bus manufacturers, equipment manufacturers and suppliers, associations, and other organizations. The commenters generally supported the proposal but provided suggested modifications to various portions of it. The agency has considered all the comments in developing the final rule. The commenters' significant points are addressed below, along with the agency's response.

III. Agency Decision

A. General Considerations

Based on the docket comments and other available information, NHTSA has decided to amend Standard No. 111 with respect to the field-of-view around school buses. This final rule amends the standard to require a bus driver to be able to see, either directly or through

mirrors, certain specified areas in front of and along both sides of school buses; to specify certain criteria for convex cross view mirrors; and to establish test conditions designed to ensure that the image of an object is sufficiently clear. Standard No. 111 is also amended to include detailed test procedures to ensure that a school bus provides adequate field-of-view around a stopped school bus, thus reducing the risk of school buses striking student pedestrians.

Among the issues addressed in this notice are the field-of-view performance requirements; the placement and characteristics of cylinders representing the field-of-view requirements; school bus mirror systems including both flat driving mirrors and convex cross view mirrors; specific concerns about convex cross view mirrors including accommodation distance, discontinuities in the surface's slope, adjustment, image quality, and labeling information about their proper use; testing procedures; and the rulemaking's anticipated costs and effective date.

While the final rule essentially adopts the provisions proposed in the NPRM, the final rule does contain several changes as compared to the proposal. Among the more important changes are that the field-of-view requirements include the area near the rear left side of the bus, that the test procedure specifies the stop signal arm be in the retracted position and the front entry door be closed during the testing, that determining the minimum radius of curvature of a mirror be based solely on the distance from the driver's eye location to the mirror surface, that the message about the convex mirror be placed inside the vehicle and be expanded to be more informative, and that testing is allowed at any point within a specified area forward of the 25th percentile adult female driver's eye location, instead of four specific points relative to the eye location.

B. Field-of-view requirements

As explained above, Standard No. 111 currently specifies that each school bus must have an outside rearview mirror of unit magnification (i.e., a flat mirror) on both sides of the bus that "provides the driver a view to the rear along both sides of the vehicle * * *". In addition, each school bus, except for forward control vehicles, must have one convex cross view mirror that complies with detailed specifications and "provide(s) the driver a view of the front bumper and the area in front of the bus."

The NPRM proposed requiring that a school bus driver be able to see, directly or through mirrors, test cylinders

representing students in critical areas around the school bus. To effectuate this goal, each school bus would be required to have mirror systems on both the left and right sides of the school bus—a set of driving mirrors to view the sides of the bus and areas to the rear of the bus, and a set of convex cross view mirrors to see specified areas at the left front corner of the bus, in front of the bus, and along the right side of the bus. Areas viewable along the bus's right side via the two mirror systems would be required to overlap, as would the areas visible along the bus's left side. Along each side, the driver would be provided with a view of the ground from the front bumper forward, along the sides of the bus, and extending at least 200 feet rearward from the mirror. The NPRM proposed that the driver must be able to see the entire top surface of the cylinders placed at critical locations around the bus. Compared to the current requirements for school bus mirrors, the proposed field-of-view requirements would extend the areas which must be visible, provide field-of-view requirements applicable to any school bus configuration, and provide greater objectivity. The NPRM asked whether the proposed field-of-view requirements, as expressed through the placement of cylinders, would reasonably represent the locations at which school bus pedestrians need to be seen by the driver during school bus loading and unloading.

With respect to the field-of-view approach, the commenters, including the National School Transportation Association (NSTA), Transport Canada, Mirror Lite, Arizona DOT (Arizona), and the Washington State Superintendent of Public Instruction (Washington State) believed that this approach was appropriate. No commenter opposed the proposed approach. Washington State commented that the proposal would provide a realistic performance standard for mirrors. Transport Canada believed that there was a need to improve the field-of-view for school bus drivers and to provide an objective measurement method for all mirrors on school buses.

After reviewing the comments, NHTSA concludes that establishing performance-based field-of-view requirements for school bus mirror systems is reasonable and appropriate. Such an approach will reduce the risk of injury to student pedestrians, while affording mirror and school bus manufacturers and users greater flexibility

C. Test Cylinders

1. Cylinder Placement

As for the placement of test cylinders used to represent student pedestrians, the NPRM proposed that they be located at specified locations near the bus's front wheels, front bumper, locations forward of the bus, near the front right and left wheels, and near the rear right wheel. These proposed locations were based on narratives in the NAS report and docket comments, the VRTC report, the State of Ohio's regulation, and the Eleventh National Conference of School Transportation. Nevertheless, unlike Ohio's regulation and the Eleventh National Conference's specification, NHTSA proposed specific locations and test procedures for showing compliance with the requirements. In requesting comments about whether the proposal reasonably represented locations where student pedestrians are struck by school buses, the agency expressly asked whether the area near the left rear wheels poses a safety problem.

While commenters generally supported the proposed locations for the test cylinders, some commenters addressed whether cylinders should be placed at certain additional locations around the school bus.

Several commenters, including the National PTA, Blue Bird, Mirror Lite, the West Virginia Department of Education (West Virginia), NSTA, Washington State, and Arizona, stated that a view down the left side of the bus was important. No commenter stated that a view of the left side of the bus was unnecessary. Mirror Lite cited fatalities in Michigan and Texas to support the view that incidents along the bus's left side, although uncommon, do occur. In recommending that the field-of-view be the same for both sides of the bus, Mirror Lite commented that the cost of such a requirement would be the same and that drivers prefer mirrors to be matching on the right and left, rather than having two different fields-of-view.

After reviewing the comments, NHTSA has concluded that the field-of-view on the left side of the bus should be extended back to the ground near the left rear wheel. While the agency acknowledges that children are infrequently struck near the left side of the bus, the agency notes that such incidents do occur. Accordingly, by requiring test cylinders to be placed by the left rear tire, the amendments will increase the likelihood that the new school bus mirror requirements can prevent these incidents as well.

The agency conducted mirror evaluations on both conventional and transit-style school buses indicating that

left side mirror systems designed to meet the proposed field-of-view requirements for the left front corner and the front of the school bus would also be able to provide a view of test cylinders located at least six feet to the left of the left rear wheel without any adjustments to the mirrors. Additionally, based on the agency's review of current mirror systems, the agency anticipates that the mirrors on the left and right side of the bus will be symmetrical (i.e., a mirror designed to view the right side of the bus will also be able to view the left side of the bus when mounted on the left front of the bus). Based on the above, the agency has modified the final requirements to include additional test cylinders located one foot and six feet to the left of the left rear axle.

Although a cylinder located twelve feet to the right of the rear axle on the bus' right side is required to be visible, NHTSA believes that is not necessary to require that a test cylinder located twelve feet to the left of the rear axle be visible. For a school bus on the side of the road in a loading zone, a cylinder located twelve feet to the left of the left side of the bus would represent a student standing a full traffic lane from the bus. The agency believes that it is unlikely that a student would be in such a position when the school bus starts to depart from the loading zone. In localities where school buses stop in a traffic lane, a cylinder located twelve feet from the left side would represent a child on the other side of the street on a two lane street.

During the course of its mirror evaluations, the agency observed that, in some cases, the cylinders at the left rear axle of the school bus were either partially or fully blocked from view by the extended stop signal arm. Visibility depended on the bus body type and the location of the stop signal and the left side cross view mirror. In contrast, the test cylinders were visible when the stop arm was retracted. The agency also noted that the test cylinders at the right rear axle were either partially or fully blocked by the door when an outward-opening front entry door was open. Based on these observations, NHTSA has decided that the test procedure will specify that the stop signal arm be in the retracted position and the front entry door be closed. This procedure recognizes that school bus drivers must close the door, which retracts the stop signal arm, and then view the mirrors to ensure that no students are in danger around the bus before the school bus leaves the loading zone. If the driver attempted to view the areas around the bus before closing the door and

retracting the stop signal arm, the stop signal arm would also block the driver's view of the road, thus impairing many driving decisions.

Blue Bird commented that placing test cylinders J, K, and L on a plane one foot away from the bus would be more appropriate than the proposed two foot distance because the two foot location of cylinder L would provide only limited visibility adjacent to the rear wheel. (The agency notes that cylinder L in the NPRM is cylinder N in the final rule.) Blue Bird commented further that a one foot distance from the most outboard edge of the front bumper for cylinders J and K would help ensure adequate visibility near the front wheels. The agency agrees with this comment and has revised the location requirements accordingly.

Blue Bird commented that there were no proposed requirements for the visibility of cylinder M, which is located six feet from the right side of the bus at the rear wheel. (The agency notes that cylinder M in the NPRM is cylinder O in the final rule.) That was an oversight in the NPRM, and a provision about cylinder M is included in the final rule's requirements for mirror System B.

NSTA suggested that a test cylinder be added to the area directly to the rear of the service door. After conducting mirror evaluations, the agency has concluded that locating a test cylinder to the rear of the service entry door would not be necessary since mirror systems that provide a view of cylinders K and L would also provide a view of the rear side of the service entry door.

Transport Canada believed that because it is theoretically possible for blind spots to exist in some areas between cylinders in front of the bus, NHTSA should specify areas whose perimeters would be defined in terms of cylinder locations that must be seen, rather than simply the cylinders themselves. In the course of this rulemaking, agency staff have evaluated a variety of mirror systems on both conventional and transit-style school buses. In all cases where the test cylinders could be seen and identified in a mirror system, the full ground areas around and between the cylinders could be seen. The agency notes that while a blind spot could occur when looking at a single mirror, such blind spots were eliminated when viewing the entire mirror system. Although it might be theoretically possible for a blind spot to exist between test cylinders, the agency believes such situations would be extremely rare.

The New York State Senate Committee on Transportation (New York) believed that the requirements in

S9.2 for the System A driving mirrors on the right side of the bus should have a field-of-view that extends twelve feet out from the side of the bus, not just two feet out, to provide the driver with adequate warning time that a pedestrian contact is imminent. The agency notes that the requirements in S9.2 are primarily for the driving mirror system which must include at least one mirror of unit magnification. Such a mirror could not be adjusted to provide a view that included the side of the bus and a point twelve feet out from the rear axle line unless it were unusually large in size. Yet, such a large mirror would create its own large blind spot. The requirements for System B convex cross view mirrors, which are pedestrian detection mirrors, already provide the seated driver with information about individuals that may be as close as twelve feet from the side of the school bus. Accordingly, because the mirror that would be necessary to accommodate New York's request would have safety trade-offs and provide redundant performance, NHTSA has decided not to change the proposed requirements for S9.2 in this rule.

2. Cylinder Dimensions

The proposed provisions about the test cylinders used to represent student pedestrians specify that they be one foot high and one foot in diameter and require that their entire top surface be visible. The agency based this proposal on the VRTC report's recommendation that measurements be made near ground level and on accounts in the docket explaining that children struck by school buses were low to the ground. Additionally, narratives in the 1989 NAS report and the mirror requirements from Ohio support the concept of using some sort of three-dimensional representation of a small child. An exception to the one foot requirement would be that the cylinder placed twelve feet to the right of the rear right wheel, would be three feet high and one foot in diameter. The agency believed that this cylinder needed to have such dimensions to evaluate elongation.

Several commenters, including NSTA, Mirror Lite, and Thomas Built, supported the proposal to require the driver to view the cylinder's entire top. NSTA commented that this requirement would help ensure that the driver is provided with a complete enough image to enable the driver to identify student pedestrians in the mirror. After evaluating new generation mirrors and some older mirrors which they consider to be "marginal," Thomas Built determined that only the new mirrors

could meet the cylinder viewing requirements. This led Thomas Built to conclude that viewing the top of the cylinders is a satisfactory requirement.

A few commenters were concerned that the proposed test cylinder was not adequate for ensuring that all of the critical areas of the ground would be visible. Washington State believed that by focusing on the cylinder's top, the proposed visibility test may be inadequate because it ignores contact at the ground level. Lo-Mar and Blue Bird believed that the view of the ground is not ensured through the use of one foot high cylinders. Accordingly, these commenters recommended that cylinders be replaced with one foot diameter flat discs.

After considering the comments about test object's dimensions, NHTSA has concluded that one foot tall cylinders better represent real-world situations than flat discs. In the majority of loading zone incidents, children struck and killed by school buses were either standing or bending over, according to the Kansas Department of Transportation's "1989 School Bus Loading & Unloading Survey." Therefore, the agency believes that most students who are struck by a school bus are at least one foot above the ground. Even children who have fallen are above ground level because their body thickness at their head or torso is at least six inches. If children have fallen, the agency expects that they will be attempting to get back up, which also adds height. The agency's mirror system evaluations further indicate that a three dimensional object such as the one foot tall test cylinder more accurately represents real-world situations than a flat disc. In addition, the cylinder facilitates testing by providing a more practicable means for demonstrating the ability of mirrors to view areas around the outside of the bus. The three dimensional cylinder also makes the relative image quality easier to ascertain.

Mirror Lite commented that the cylinders should be of a readily available design to facilitate testing and to avoid discouraging manufacturers from conducting the test. This view led Mirror Lite to recommend using bright orange 18" traffic cones. Washington State requested that along with establishing a requirement for the manufacture of new buses and equipment, the standard should also provide an ongoing performance standard for the end user (e.g., mechanics and bus drivers). Similarly, Ann Arundel County (Maryland) Public Schools explained that they were

interested in incorporating the test cylinder grid into its training program.

As for Mirror Lite's comment about an 18" traffic cone, NHTSA believes that such a device is too tall to represent a child who may be bending over or has fallen down. The agency nevertheless agrees with Mirror Lite that having a readily available test object will assist States and local school districts in evaluating mirrors and training school bus drivers. The agency believes that the one foot cylinder is a reasonable size and shape that should be easy to obtain or fabricate. The agency also notes that the one foot test cylinder is only required for compliance test purposes, and that anyone desiring to build a test lane can substitute another test object when conducting evaluations or training.

While generally supporting the performance requirements for mirror System B, Blue Bird recommended an alternative requirement which defined the bounds of specific geometric areas on the ground outside the school bus which would have to be seen. Among Blue Bird's criticisms of the proposal were the use of a cylinder rather than a disc, the need to reduce the distance between the test cylinders and the bus to one foot, the need to include cylinder M in the performance requirements, and the need to include visibility requirements for the left side of the bus. Since all of these items have been addressed above and all but the use of a disc were adopted, the agency does not believe Blue Bird's recommended alternative is necessary.

3. Cylinder Color

The NPRM proposed that the test cylinders be a color which provides a high contrast with the surface on which the bus is parked. According to the VRTC report, such a contrast would facilitate compliance testing. While the proposal did not specify a particular color, the agency requested comments about what color would provide a high contrast with the ground and whether a given color should be specified.

Several commenters addressed the appropriate color and design of the test objects. NSTA suggested that rather than having a high contrast color, the cylinder should be a color that blends into the surroundings, believing that visibility becomes a problem when a child blends in with the surroundings (e.g., the bus itself, pavement). New York favored replacing the cylinders with two dimensional cutouts of children and adults with colors that are representative of clothes typically used by school children or adults.

Other commenters believed that the test cylinder should be a bright color. Mirror Lite recommended using bright orange traffic cones. Thomas Built explained that its mirror tests are conducted using bright colored cylinders, e.g., safety orange sides with lime green tops and black letters. R&R Research recommended that to make the test procedure less vague, the color of the test cylinders should "be specified either quantitatively (i.e., the percent contrast) or qualitatively by specifying the color of the cylinders."

After reviewing the comments and its own mirror evaluations, NHTSA has decided that the test cylinder must provide a high contrast with the surface on which the bus is parked. The agency believes that having such a high contrast will facilitate compliance testing. Nevertheless, the agency has determined that it would be inappropriate and unnecessary to specify a given color for the test cylinder. The agency has no information to suggest that one color would be more appropriate for a test cylinder than any other color. The agency believes that specifying a single color would complicate the standard without providing any significant corresponding benefits.

D. School Bus Mirror Systems

1. General

Standard No. 111 currently requires school buses to be equipped with two types of mirror systems: (1) An outside rearview mirror of unit magnification ("flat mirror") of not less than 50 square inches of reflective surface on each side of the bus; and (2) one convex cross view mirror. In practice, buses are equipped with a flat driving mirror on each side of the bus, two or more convex cross view mirrors, and typically at least one supplemental convex mirror mounted near each flat mirror and designed to serve as an additional driving mirror. Convex driving mirrors are typically about four inches in diameter and have a radius of curvature (ROC) greater than 35 inches. These larger radii of curvature mirrors have much greater image clarity than the convex cross view mirrors mounted on the front of the bus and therefore can safely be used as driving mirrors. All mirror systems are used by drivers to see students in the loading zone around buses, although the flat mirrors and the supplemental convex driving mirrors are primarily designed to serve as driving mirrors.

The NPRM proposed to modify the current requirements for both types of mirror systems so that each school bus

would be equipped with two mirror systems on each side of the bus: (1) A system that includes flat driving mirrors of unit magnification and optional convex driving mirrors (designated as "System A") and (2) a system that consists of convex cross view mirrors for student detection during loading and unloading (designated as "System B"). The areas viewable along both sides of the bus via the two mirror systems would be required to overlap on each side, providing the driver with a view of the ground in front of and along both sides of the bus and extending at least 200 feet rearward from the driving mirror. Because the agency recognized that most current driving mirror systems on school buses consist of both a flat mirror and a convex mirror, the NPRM included language that "one or more mirrors" could be used to meet the requirements of S9.2 for System A mirrors.

2. Driving Mirrors—System A Mirrors

As for System A mirrors, the NPRM proposed making the current requirements for such mirror systems more objective and expanding the field-of-view to include a larger area. Specifically, the NPRM proposed amending section S9.2 to require that the driver have a view at least 200 feet to the rear and at least two feet to the right of the right side of the bus. The NPRM explained that the proposed requirements reflect the findings of the 11th National Conference on School Transportation and accounts in the NAS report and docket that a significant number of incidents occur by the right rear wheels of school buses.

In responding to the NPRM's proposal about System A mirror systems, several commenters, including Mirror Lite, Thomas Built, Transport Canada, and Blue Bird, appear to have misunderstood the proposed requirements of S9.2. Based on their comments, it appears that they believe the system's flat mirror portion by itself would have to comply with the requirement that the view of the "area of the ground which extends rearward from the mirror surface [must be] not less than 200 feet." The agency wishes to clarify that the flat mirror by itself need not comply with S9.2. The proposed requirements were for a "mirror system" (emphasis added) which could include both a flat mirror and a convex mirror. Accordingly, to comply with S9.2, it is permissible for the convex portion of the mirror system to provide some portions of the required field-of-view.

The agency believes that it is unnecessary to expressly require the

installation of a convex mirror for the driving mirror system. Since the proposed revisions to Standard No. 111 are performance-oriented, not design-oriented, manufacturers can choose whatever mirror system they believe is best. Avoiding unnecessary restrictions facilitates the introduction of future technological improvements in mirror systems.

Blue Bird suggested modifying S9.2(c) by establishing specified zones along both sides of the bus which would have to be viewable to the seated driver. As explained in the section on test cylinders, the agency believes that establishing field-of-view requirements through test cylinders at specific locations around a school bus provides a more realistic simulation of real-world school bus operations than establishing geometric zones.

Blue Bird also commented that establishing minimum permissible radii for convex mirrors used in proposed mirror System A could be detrimental to the performance requirements being proposed. The agency notes that neither the NPRM nor the final rule included provisions about minimum radii of curvature for System A mirrors. The same is true for System B mirrors.

3. Convex cross view mirrors—System B Mirrors

a. *General.* S9.2(a) of Standard No. 111 currently contains detailed specifications about the characteristics of convex cross view mirrors, including minimum and maximum permissible radii of curvature, minimum surface areas, and restrictions for convex mirrors with non-uniform radii. The current standard only requires one convex cross view mirror.

The NPRM proposed that a cross view mirror system (System B) be provided on both sides of a school bus to ensure that seated drivers have a complete view of all critical areas in front of and along both sides of the bus that are not within their direct field-of-view. The NPRM also included a requirement that "[T]he view of the ground provided at the driver's eye location by system B shall overlap with the view of the ground provided by system A." The agency proposed to delete the current specifications for convex mirrors, believing that this action would permit States and local school districts to use a wider variety of mirrors.

The NPRM addressed several subissues about convex cross view mirror characteristics, including accommodation distance (i.e., the distance at which people can focus on images in mirrors), discontinuities in the mirror surface's slope, adjustment,

informational labeling, and image quality.

In addition to general questions about convex cross view mirrors, the agency specifically asked about whether a minimum permissible radius of curvature should be specified, whether convex cross view mirrors should be used for driving purposes, and whether the upper portion of convex mirrors should be cut off or blackened out to reduce the amount of glare reflected into the driver's eye.

All commenters supported using convex cross view mirrors to view areas outside of school buses. Commenters also addressed specific points about particular mirror systems. Mirror Lite believed that wide-angle cross view mirrors are better than multiple conventional mirrors because having multiple mirrors would result in confusion as to which mirror is showing what image.

Several commenters, including Thomas Built and Blue Bird, stated that in practice, convex cross view mirrors are used for driving purposes. Thomas Built and Blue Bird commented that certain convex cross view mirrors should not be used as driving mirrors. These comments are addressed later in this preamble in the section discussing an instructional message for the proper use of convex cross view mirrors.

Several commenters responded to the agency's question in the NPRM about cutting off or blackening out the cross view mirror's upper portion. The Arizona DOT opposed cutting off or blackening out any portion of the convex cross view mirror, believing that all portions of the mirror provide some benefit if properly adjusted and used. In contrast, Washington State, the Tennessee DOE, Florida, the Sloan Company, and Mirror Lite believed that the top portions of convex cross view mirrors serve no useful purpose and should be eliminated. Mirror Lite stated that the "market place has determined the upper portion of the mirror is of no value and may be a distraction to the driver."

Notwithstanding the comments favoring the elimination of the top portion of convex cross view mirrors, NHTSA believes that there is no conclusive information to support this approach. Additionally, there is no information available for determining what specific areas of mirrors should be cut off or blackened out. This type of requirement would also make the standard more design restrictive than the agency believes is desirable. In addition, Mirror Lite's claim that the "marketplace" has determined the need for blackening out such mirrors does not

appear to be accurate, since several convex mirrors without blacked-out areas are apparently being successfully sold in the marketplace. However, if certain mirror areas are found to be inefficient, then the agency anticipates that the marketplace will make judgments on the efficacy of various mirror systems and that those judgments will be reflected in future mirror designs. Since no information was produced to suggest that the upper portions of cross view mirrors were dangerous to a driver's view of pedestrians, the agency has decided not to establish limitations on the field-of-view coverage provided by a cross view mirror. The agency believes that individual State and local school districts are capable of evaluating mirror systems that meet these standards and selecting those which best meet their needs, including, if they so chose, mirrors from which the top portions have been eliminated.

b. *Accommodation distances.* The NPRM proposed a new provision that would require that the distance from the center of each convex cross view mirror to the center point of the driver's eye location, plus one-half the smallest radius of curvature of the mirror surface be at least 39 inches. The agency based this proposal on the VRTC report's finding about accommodation distances, i.e., the finding that older people have greater difficulty focusing on nearby objects, especially in convex mirrors with small radii of curvature. According to the VRTC report, if the distance between the driver and the image in the mirror is less than 40 inches, drivers over 40 years old may see a blurred image.

Several commenters supported the 39 inch accommodation distance, believing that such a requirement is feasible. Thomas Built, R & R Research, and Mirror Lite stated that the 39 inch distance between the driver seat to the mirror is acceptable for most currently-produced buses. Nevertheless, R & R Research, along with NSTA, questioned whether transit type school buses could be equipped to comply with the 39 inch requirement. Neither NSTA nor R & R Research provided any specific information to support their concerns about transit buses.

Blue Bird disagreed with the 39 inch requirement, stating that it would be difficult to measure accurately and might hinder mirror performance and innovations. Blue Bird opposed having restrictions on the mirror's location, claiming that the agency does not restrict the locations of other bus components such as gauges, switches, and lights.

Based on the available information, including the agency's evaluations of the comments and various mirror systems, NHTSA has decided to adopt the proposed accommodation distance requirement with certain modifications. In evaluating various mirror systems on both conventional and transit-style school buses, NHTSA has found that these mirrors are always capable of complying with the proposed 39 inch requirement of S9.3(b)(2) when mounted at locations consistent with the mirror manufacturers' recommendation. The agency also notes that the concerns expressed by NHTSA and R&R Research about transit-style school buses not being able to meet such a requirement were not shared by the school bus and mirror manufacturers commenting on this issue, all of whom stated that the requirement could be met. Blue Bird did not claim that the proposed 39 inch requirement could not be met, only that it would be difficult to measure accurately. Also, Blue Bird appears to disagree with the proposed requirement on a philosophical basis, i.e., since NHTSA does not establish restrictions on the location of other components of the bus used during its operation.

In evaluating the proposal, NHTSA has measured the distances from the driver's eye location to the mirror surface on a number of school buses, including transit style buses, and has found it to be a straight-forward task that gets easier the more it is done. The aspect of the measurement that required the most effort was establishing the line of sight through a window and then measuring that line. The use of standard tape measures, one used to measure the distance from the mirror to the window and the other to measure the distance from the window to the eye location, worked well for establishing the line of sight and measuring it. The thickness of the window was then added to the measured distances. A more elaborate test setup could be established using a laser or high intensity light beam to establish the line of sight. Based on the agency's experience in measuring mirror distances, the degree of accuracy is not that critical since all of the mirror distances were well over 39 inches.

However, NHTSA agrees with the commenters that determining the minimum radius of curvature of a mirror may be a difficult and time consuming task. Accordingly, the agency has modified the final requirement so that the eye accommodation distance is based solely on the distance from the driver's eye location to the mirror surface.

The proposed requirements in S9.3(b)(2) have been modified to read as follows in this final rule: "Each mirror shall be located such that the distance from the center point of the eye location of a 25th percentile adult female to the center of the mirror surface shall be at least 37.5 inches." To repeat, the proposed requirement was for the distance from the center of each convex cross view mirror to the center point of the driver's eye, plus one-half the smallest radius of curvature of the mirror surface, to be at least 39 inches. While the proposal's provision about adding "one-half the smallest radius of curvature" to the distance from the driver's eye to the center of the mirror is no longer expressly part of the specified measurement, the agency derived the 37.5 inch distance in this final rule using the proposed combination of distance between the driver's eye and the mirror and one-half the radius of curvature of the mirror.

The 37.5 inch minimum was derived as follows. Of all the mirrors used in the VRTC report, the smallest radius of curvature (and thus the one with the poorest image quality) was 3.41 inches. Assuming that the design radius of curvature of future mirrors would not be less than 3 inches, then one-half of that radius of curvature would be 1.5 inches. Subtracting 1.5 inches from the 39 inch proposed requirement leaves 37.5 inches. The final rule accordingly accounts for accommodation distances in worst case situations, just as the proposal did, but simplifies the calculation.

NHTSA disagrees with Blue Bird's comment that mirror location should not be regulated because the location of other components (i.e., gauges, switches, and lights) in the bus are not regulated. The agency believes that to ensure the safety of student pedestrians, the images in school bus mirrors, particularly convex mirrors, cannot be blurred for any driver. That same level of concern is not necessary for clearly seeing a gauge or switch, since seeing such devices is not as critical for student safety as viewing a mirror system. Also the inherent nature of convex mirrors, which reduce the size and elongate the image of the reflected object, make mirror images more difficult to see and use. By contrast, the task of identifying gauges and switches is comparatively straightforward.

Arizona DOT commented that school buses should be equipped with forward mount driving mirrors on the left side, in lieu of the low mount driving mirrors currently being used by many districts. Arizona stated that this requirement "is needed in order for the mirror to be at

least 39" from the driver's eye." NHTSA notes that Arizona appears to have misinterpreted the provision's applicability, because the minimum accommodation distance applies only to convex crossview (System B) mirrors, not to driving (System A) mirrors. Although the Arizona comment is related to driving mirrors, instead of the cross view mirrors, it illustrates that different cross view mirror mounting locations may be necessary on some types of school buses to meet the accommodation distance requirement.

c. Discontinuities in a mirror surface's slope. Standard No. 111 currently prohibits discontinuities in a mirror surface's slope. The NPRM proposed retaining this requirement, but redesignating it S9.3(b)(3). The proposal explained that prohibiting mirror discontinuities would prevent mirrors in which the slope or surface of the mirror was concave, thus protecting against poor image clarity.

All those commenting on this issue, i.e., NSTA, Mirror Lite, Thomas Built Buses, and New York State, agreed that retaining the current prohibition on mirror discontinuities is necessary. Accordingly, the final rule adopts this provision.

Mirror Lite suggested that the agency use the term "diminishing image" instead of "distortion" to describe the image quality provided by cross view mirrors. It stated that distortion is a flaw in the mirror surface that can be found in any type of mirror. After reviewing the comment, the agency agrees with Mirror Lite and has decided to use the phrase "image clarity" rather than "distortion" in the preamble. Nevertheless, the agency notes that this term is not in the regulatory text.

d. Mirror supports and adjustment. Standard No. 111 currently requires each flat mirror and each convex cross view mirror to be installed with a stable support. The NPRM proposed that each convex cross view mirror "be installed with a stable support designed to dampen vibration." This requirement is intended to ensure a clear and properly focused image by preventing mirrors from vibrating unreasonably and by reducing the likelihood that mirrors become misaligned. Comments to the ANPRM explained that such misalignment reduces a driver's ability to see children in potentially dangerous locations around a stopped school bus.

The NPRM asked the following questions about mirror stability:

- (1) Could the requirements be made more precise?;
- (2) Is it necessary to require adjustable mounting brackets for all types of cross view mirrors?; and

(3) Do non-adjustable brackets reduce the amount of vibration of the mirror while driving or idling?

Commenters disagreed about the need for requiring mirrors to have stable supports. NSTA and Thomas Built believed such requirements were not needed, with Thomas Built stating that most current mirror mounting systems provide a stable yet easily adjustable mirror system. In contrast, Washington State and Transport Canada supported the proposal to require stable supports. Transport Canada favored an objective test to evaluate the stability of mirror brackets for cross view mirrors but had no particular recommendations to increase the requirement's precision. Washington State supported the proposed regulatory language, agreeing that vibration can significantly harm image quality. Nevertheless, Washington State suggested that additional language be included stating that if a mirror adjustment mechanism is necessary, it should be designed so that vibrations would not misalign the mirror. Arizona explained that its draft State mirror requirements would specify that cross view mirrors "shall be easily adjustable but be rigidly braced to reduce vibration."

Commenters discussed the types of mirror adjustment mechanisms currently being used. Some mirror systems have both adjustable brackets and mirrors, some only have adjustable mirror portions, and others only have adjustable brackets. Mirror Lite, Flynn, and Sloan believed that mirrors should be adjustable. Tennessee, Arizona, and Blue Bird believed that mirrors should have adjustable brackets. Blue Bird commented that properly tightened adjustable brackets become rigid and thus perform the same function as non-adjustable brackets.

After considering the commenters' varying views, NHTSA has determined that Standard No. 111's existing requirements for mirror stability are appropriate, and they are adopted in this rule. The agency recognizes that different mirror manufacturers have developed various types of mounting brackets and mirror mountings that employ different degrees of adjustability or non-adjustability. There is no evidence in the comments to the docket, or in any of the mirror evaluations the agency has conducted, that the proposed requirements could be made any more precise. NHTSA notes that Standard No. 111 currently requires "stable support" for both inside and outside mirrors on all types of vehicles, not just school buses. The agency believes that these requirements should be retained for school buses. While a

more precise requirement is not possible, the agency believes it is important to retain a requirement for mirror stability in the standard as a means of highlighting the importance of mirror stability to mirror performance.

One change from the proposal is prompted by Transport Canada's comment that the stability requirements should also apply to the System A mirrors. As Transport Canada stated, Standard No. 111's existing requirements for school bus outside rearview mirrors include "stable supports." The agency agrees that the stability requirements should continue to apply to System A mirrors, and the final rule's requirements have been modified accordingly.

Additionally, NHTSA notes that on April 26, 1991, it revised Guideline #17 to state "that all school buses shall have a system of mirrors that conforms to the school bus requirements of FMVSS No. 111." (56 FR 19270) While this amendment means that the most current requirements in Standard No. 111 are applicable, the agency has decided to issue elsewhere in today's **Federal Register** a conforming amendment to clarify this situation. In particular, the conforming amendment deletes the outdated requirements referring to the 30 inch rod test in Guideline #17.

e. Informational label on using cross view mirrors for driving purposes. The NPRM discussed the agency's concern about using convex cross view mirrors as driving mirrors. These concerns were based on the agency's belief that the inherently poor image clarity and image size reduction characteristics of highly convex mirrors make such mirrors inappropriate for driving purposes. In addition, the reaction time is slower for drivers using several mirror systems each with significantly different radii of curvature. Such mirrors may not provide the driver with a consistent reference point with respect to the location of images in the various mirrors. Accordingly, the NPRM proposed that mirrors with an average radius of curvature less than 35 inches be marked with the following message:

"THIS MIRROR IS NOT DESIGNED FOR USE WHILE THE VEHICLE IS IN MOTION."

The NPRM identified three issues about these informational requirements: (1) The need for such a message; (2) the message's content; and (3) the message's location. As to location, the agency proposed that the message be placed directly on the mirror, but requested comments about other possible locations.

Regarding the need for an informational message on convex cross

view mirrors, only NSTA and Thomas Built Buses believed that a message was unnecessary. NSTA stated that the message could impair the mirror's effectiveness and distract the driver. NSTA and Thomas Built said that the message was unnecessary because they believed that driver training would be more effective than a label whose benefits were questionable.

All other commenters supported having an informational label either expressly (Mirror Lite, R&R Research, Washington State, and Sloan Company) or implicitly (Transport Canada, Anne Arundel County Schools, New York State, Tennessee DOE, Arizona DOT, Lo-Mar, and Blue Bird) by not objecting to the label, while commenting on the location, size, or wording of the warning. R&R Research stated that an informational label was necessary because in practice drivers use cross view mirror systems to gain information on traffic conditions around the bus.

After considering the comments, NHTSA has determined that a message explaining the proper use of convex cross view mirrors is necessary since some drivers use these mirrors for driving purposes. The agency is aware that properly trained drivers will have been taught that these mirrors are for pedestrian detection purposes only. Accordingly, NHTSA believes that the label will serve more as a reminder message rather than as an "instructional" message for those drivers trained in the proper operation of school buses and use of mirror systems. The agency believes that the message will also benefit untrained drivers, by informing them about the mirror system's proper use.

As to the content of the message, R&R Research commented that the label should communicate two things: the correct action required of drivers, and the potential consequences of inappropriate behavior. NHTSA agrees with R&R's comment that a more positive, informative message would provide greater potential safety benefits than the proposed one. Specifically, the message adopted in the final rule explains what action should be taken (i.e., use the mirror to detect pedestrians), what action should not be taken (i.e., do not use the mirror to view traffic), and why the mirror should not be used inappropriately (i.e., the images do not accurately show another vehicle's location). Accordingly, the message required by the final rule has been changed to read as follows:

"USE CROSS VIEW MIRRORS TO VIEW PEDESTRIANS WHILE BUS IS STOPPED. DO NOT USE THESE MIRRORS TO VIEW TRAFFIC WHILE BUS IS MOVING. IMAGES

IN SUCH MIRRORS DO NOT ACCURATELY SHOW ANOTHER VEHICLE'S LOCATION."

Many commenters addressed the proper location for an informational message about cross view mirrors. Only Anne Arundel County favored placing the message on the mirror itself, claiming that placing this message elsewhere inside or outside the bus would create problems since many buses already are required to contain several messages.

All other commenters, including R&R Research, New York State, Lo-Mar, Arizona DOT, Tennessee DOE, Transport Canada, Washington State, and Mirror Lite, recommended that the message be placed inside the school bus near the driver instead of on the cross view mirror itself. Commenters stated that a message placed directly on the mirror would be difficult to read and would obstruct some images, thus adversely affecting mirror performance. Tennessee DOE stated that the message should be placed on or near the instrument panel. New York State favored including the message on a sticker attached to the bus in the line of sight of the driver when observing the mirror. R&R Research favored placing the message inside the bus either on the instrument panel or near the interior rear view mirror.

After considering the above comments, NHTSA has decided that the message should be located inside the school bus near the bus driver instead of on the convex cross view mirror. The agency agrees with the comments that a message placed directly on the mirror would be difficult to see and would reduce mirror performance by obscuring some mirror images. As noted above, the agency's primary goal is for drivers to understand that these mirrors should not be used while the vehicle is in motion because information obtained in such situations is not accurate enough to make appropriate driving decisions.

The agency agrees with Anne Arundel County that the driver's area already contains a number of informational labels explaining proper school bus operations. Since the agency is unaware of any single "best" location for the mirror-use label, the final rule provides flexibility to bus manufacturers in placing the label at an appropriate location which is prominent and visible within the driver's area of the bus. The standard requires the label to be printed in type face and color that are clear and conspicuous. NHTSA notes that these locations, size, and color requirements are patterned after the warning label requirements for utility vehicles in 49 CFR 575.105.

f. *Performance requirements for image clarity.* The NPRM proposed performance requirements to ensure that the images in cross view mirrors were of sufficient minimum quality to provide the school bus driver with reliable information about the presence of children in front of and along both sides of the bus. In selecting these proposed requirements, the agency relied on the VRTC report's finding that only a limited level of image quality is necessary to ensure that a school bus driver is aware of a student in a dangerous zone, so as not to move the bus until the student has moved to a safe location.

The NPRM proposed two requirements to ensure adequate image quality. First, the separation between the edge of each cylinder's image and the edge of the effective mirror surface would have to be not less than 3.0 minutes of arc. This requirement stems from the agency's finding that the most difficult images to recognize are elongated ones near the mirror's curved reflective edge. Second, with respect to the image of the cylinder perpendicular to and twelve feet away from the rear right axle, the angular size of the longest dimension of that image would have to be not less than nine minutes of arc and the angular size of its shortest dimension would have to be not less than three minutes of arc. This requirement stems from the agency's finding that unreasonable elongation would make it difficult for the driver to identify a child's image in the mirror.

Several commenters addressed the issue of image quality. Mirror Lite believed that a test procedure was necessary to reduce distortion due to a flawed mirror surface and to increase image quality. NSTA stated that only a reasonable level of image quality is necessary, since a driver needs only to recognize that an object in the mirror is a child and does not need to know specific details about the image. Thomas Built commented that the specification for the minimum distance between the image and the mirror's effective edge could be eliminated, believing that the elongation requirements of S9.4(b) (1) and (2) should make the image "acceptable."

Commenters also provided general comments about the image quality requirements. Transport Canada stated that when a cylinder is visible in two mirrors, both images should have to meet the requirements for minimum size and distance from the mirror's edge, believing that this would ensure that a small child would not be overlooked. While Blue Bird agreed that the location of the image relative to the outer edge

of the mirror surface should be limited, it believed that the proposed requirement of three minutes of arc would be difficult to measure given its dependence on the following variables: (1) The radius of effective mirror surface, (2) mirror adjustment by the driver, and (3) distance from the driver's eye location to the image in the mirror for different mirror combinations and bus types on which mirrors are mounted. Blue Bird was concerned that this proposal would result in ambiguities given potential problems in accurately measuring the allowed mirror distance between the image and edge of the mirror. Blue Bird recommended establishing a limit on the distance between images and the mirror edge which it characterized as being more easily measurable during compliance testing.

Several commenters provided specific suggestions about changing the requirements for image quality. Thomas Built recommended that each cylinder's top surface have a letter which would be used to evaluate image clarity. Thomas Built believed that the proposed three minutes of arc was "minute and undeterminate," stating that on a mirror with a 28 inch radius of curvature, three minutes of arc is only .024 inches. Accordingly, Thomas Built suggested the requirement be eliminated unless a fixed dimension such as $\frac{1}{16}$ inch is specified. Similarly, Blue Bird suggested establishing a fixed distance of $\frac{1}{16}$ inch along the effective mirror surface's edge to be blocked out during compliance testing.

After reviewing the comments, NHTSA repeated several mirror evaluations and created charts representing a distance of three and nine minutes of arc for use in the proposed test procedure. (See Figure 4.) Based on that evaluation's results, the agency believes that three minutes of arc can be accurately measured and that this dimension provides adequate separation between the test cylinders and the effective edge of the mirror. Accordingly, the final rule adopts the proposed three minutes of arc requirement.

As for Thomas Built's suggestion to letter the tops of the cylinders, NHTSA notes that the VRTC report found that such precision is not necessary for the driver to recognize that a pedestrian is in danger. In addition, such a high level of precision might be impracticable for certain mirrors that nonetheless provide an adequate field-of-view. Similarly, the agency believes that adopting Transport Canada's recommendation for multiple images of the same cylinder to comply with the image clarity requirements

would be unnecessary for safety and would be redundant. Moreover, such a requirement appears to be impracticable based on the agency's evaluation of various mirror systems.

As for the suggestions by Thomas Built and Blue Bird to establish a minimum fixed dimension of either $\frac{1}{16}$ or $\frac{1}{4}$ inch between the test cylinder image and the mirror's effective edge, NHTSA believes such an approach would be neither practicable nor appropriate. NHTSA notes that the "effective edge" of a convex mirror varies depending on the adjustment of the mirror and the driver's eye location. Accordingly, it is not feasible to specify a measurement from a variable location since the effective edge of a convex cross view mirror is often towards the center of the mirror, instead of at the actual edge of the mirror.

g. *Image elongation.* As noted above, the NPRM proposed language controlling the minimum angular size of the image of the test cylinder located twelve feet perpendicular to the side of the bus at the right rear axle line. The purpose of this proposal was to ensure that the image would not appear unreasonably elongated, a phenomenon that might prevent drivers from being able to identify a child's image in the mirror. As noted in the VRTC report and in the agency's in-house evaluation, drivers have the most difficulty seeing images of objects along the axis perpendicular to the right rear wheel because some current designs of convex cross view mirrors unreasonably elongate the image.

Several commenters expressed their views about the elongation requirement. R&R Research stated that the proposed minimum image sizes of three minutes and nine minutes of arc would be adequate as a minimum standard for most situations. Nevertheless, it believed that occasionally a driver with poor vision in low contrast situations would not be able to detect objects in a mirror designed to comply with the proposed minimum image size requirements.

Blue Bird objected to the proposed elongation requirements, claiming not to understand the use of cylinder N to measure distortion. Blue Bird believed that the agency did not justify the specified angular dimensions for a distorted image viewed in any particular mirror, arguing that the proposed angular sizes may be too restrictive and may not correspond to real-world situations. In support of its argument, Blue Bird cited the VRTC report which stated that "It is better to have a 'distorted' object in the mirror than no object at all." Based on the above, Blue

Bird requested that the agency conduct additional research to determine practical real-world limits for allowable image distortion.

Commenters also offered specific recommendations about the performance requirements for elongation. R & R Research suggested that the final rule contain either a table of target dimensions that subtend the three and nine minute visual angles when viewed at a specified distance or contain the mathematical formulae to calculate them. Lo-Mar requested that "angular size" be better defined, claiming that the angular size of the cylinder's image in the mirror is confusing. Nevertheless, Lo-Mar offered no specific suggestions.

Transport Canada suggested that the image size requirements be extended to all cylinders in all mirrors, stating that cylinder N will not necessarily appear in the mirror at the mirror's smallest radius of curvature. Transport Canada also suggested that the minimum angular size for cylinders A through F be five minutes of arc, and the minimum angular size for cylinders G through K be ten minutes of arc.

After reviewing the comments and conducting additional mirror evaluations, NHTSA has decided to adopt the proposed requirements for minimum angular dimensions of test cylinder N in this final rule. The agency notes that the test cylinder identified as N in the NPRM is identified as cylinder P in this final rule. The agency believes that the elongation requirements are necessary to protect against poor image quality for objects toward the rear of the bus.

In response to the comments from Transport Canada, Lo-Mar, and Blue Bird, the agency notes that test cylinder P will most often be located further towards the edge of the effective mirror surface than the other test cylinders. Therefore, cylinder P's image will typically be a worst-case image that is subjected to more spherical aberration than other images that are further from the effective edge of the mirror. Because of this, the image of cylinder P will typically be the least clear. This fact, combined with test cylinder P being located the farthest away from the mirror and driver, indicates that controlling the image clarity of test cylinder P should effectively control the image clarity of all test cylinders.

NHTSA believes that the minimum angular sizes (three minutes and nine minutes) adopted here in the elongation requirements are consistent with the dimensions adopted in the image clarity requirements for the distance from test cylinders to the effective edge of the

mirror (three minutes). Both sets of dimensions were based on NHTSA mirror evaluations and the capabilities of these existing mirrors to meet those dimensional limits. While real-world evidence to define conclusively the optimum image sizes is not available, and may be impossible to obtain because of the many factors influencing the clarity of an image in a cross view mirror, the agency believes the adopted image clarity and elongation requirements are reasonable and practicable. Aside from the objections by Blue Bird and Lo-Mar, no other comments were received on this subject. The agency assumes that the other commenters tacitly approved the image clarity and elongation requirements since the NPRM expressly asked about the reasonableness and practicability of these requirements, a subject about which the commenters are generally knowledgeable.

After reviewing R&R Research's comment about including a comparison chart and the mathematical formula, the agency has decided to modify the final rule to incorporate a size chart for three minutes and nine minutes of arc and the formulae for calculating them.

E. Testing procedures

1. General

Based on the VRTC report and other agency findings, the agency proposed in section S13 certain test procedures under which the proposed performance requirements would be evaluated. As explained below, the NPRM proposed detailed specifications about the characteristics of test cylinders and their placement at critical locations in front of and along both sides of the school bus. The NPRM also proposed a testing reference point and testing procedures, including the photographing of test cylinders.

2. Testing Reference Point 25th Percentile Female

The NPRM proposed that compliance testing be measured relative to the center point of the eye location of a 25th percentile adult female represented by a two dimensional manikin. The agency selected this sized driver because such a driver tends to have a poorer direct field-of-view of the area near the bus than a taller (e.g., 95th male percentile) driver.

The proposed regulatory text in S13.2 contained specific information on determining the eye location of a 25th percentile adult female seated in the driver's seat. These provisions concerned the seat's position and adjustment procedures.

Several commenters addressed the testing requirements related to the driver position. R & R Research believed that the standard need not refer to the 25th percentile female since precise dimensions from the seat are provided. Blue Bird disagreed with the use of a 25th percentile female for identifying the eye location, stating that for passenger cars, Standard No. 111 uses a driver's eye location corresponding to a 95th percentile male. Notwithstanding its criticisms, Blue Bird acknowledged that the proposed eye location procedures would allow precise determination of the driver's eye location in any bus. Transport Canada believed that multiple eye locations should be used in the test procedure, including a 5th percentile female and a 95th percentile male. It stated that the 95th percentile male provides the worst-case viewing in indirect field-of-view situations since that type of driver sits farthest from the mirrors.

After reviewing the comments, the agency continues to believe that the eye location of the 25th percentile adult female is appropriate for representing a "worst case" for visibility. Therefore, the proposed requirements are adopted in this final rule. The agency notes that because the adopted requirements consider the bus's entire field-of-view and not just the indirect view created by mirrors, the 25th percentile female provides a more stringent testing perspective than a 95th percentile male. This consideration outweighs the perceived benefits from having consistent reference points in Standard No. 111 for all the different types of vehicles.

The agency believes that Transport Canada's suggestion that eye locations be based on 95th percentile males and 5th percentile females would create excessive requirements. As discussed below in the section on "Camera Testing Points," the final rule allows for compliance within an area formed by the points of an arc located six inches to the left, forward, and right of the eye location of a 25th percentile adult female. Such a requirement recognizes that drivers typically move their heads while viewing mirrors, and that the range of these movements would encompass eye locations for various size drivers.

As R&R Research stated, the final rule provides dimensional information for locating the center point of the driver's eye location. Even though it may not be strictly necessary to do so, the agency believes that the rule should expressly state that the source of that dimensional information is the 25th percentile adult female.

3. Mirror Adjustment During Testing

The NPRM proposed that the mirrors be adjusted in accordance with the manufacturer's recommendations (see S13.3). Several commenters addressed the issue of mirror adjustment. R&R Researcher and Transport Canada stated that the agency should modify proposed S13.3 in the final rule to state that, once adjusted, the mirrors must remain fixed in one position throughout the measurement procedure. On the other hand, New York State commented that mirrors subject to Standard No. 111 should be remotely adjustable from the driver's seat to accommodate the eye locations of different size drivers.

After reviewing the comments, NHTSA has decided to modify the language in S13.3 to prohibit moving or adjusting mirrors during compliance testing. The agency's intention in the NPRM was to require mirrors that would, once properly adjusted, afford the driver a clear view of children present around stopped school buses. Mirrors that must be repeatedly adjusted to view the entire area around the stopped bus would not effectuate that intention. In addition, mirrors that must be repeatedly adjusted are not likely to be adjusted every time by the driver, which would mean there potentially could still be situations where the driver could not detect child pedestrians around the stopped school bus. To ensure that the mirrors required by this final rule will not need any further adjustments after the initial one, this rule modifies the proposed language in S13.3 to make such a requirement explicit.

This rule has not been modified in response to New York's comment about remotely adjustable mirrors. As explained above, the agency is seeking to require mirrors that will offer a clear view of the area around a stopped school bus without any further adjustments after the initial one. While remotely adjustable mirrors are now available, they will not be considered as complying with this rule if they must use their adjustability characteristics to provide the required view during testing.

4. Camera Testing Points

The NPRM proposed that observations would be made and photographs taken of the test cylinders from a point representing the center of the driver's eye location for a 25th percentile adult female, as well as at locations six inches forward, left, and right of the center of the driver's eye location. These multiple positions were intended to account for head

movements. Under the proposed test procedures, cylinders that were directly viewable would be evaluated first, and then cylinders that were not directly viewable would be evaluated. In both situations, the evaluator would look through a camera's film plane to determine whether the entire top surface of a test cylinder could be directly seen. A comparison chart placed above each mirror would serve as a reference point in evaluating the image size and amount of distortion of cylinders visible in a mirror.

Many commenters addressed the requirements related to the camera locations. The Arizona DOT supported the proposed procedure. According to this commenter, it evaluated some existing mirror systems in accordance with the proposal and determined that the driver's eye location can be established and the camera location is correct.

Other commenters either criticized the proposed camera-related testing procedures or offered suggestions to improve the requirements. Mirror Lite was concerned that the camera location requirements would be interpreted differently by various bus manufacturers, but did not explain the basis for its concern. Thomas Built requested that mirror systems should only have to meet the test requirements from any one of the allowable camera locations instead of all locations, claiming that the time and cost of conducting photographic tests at multiple locations would be unreasonable. In support of its request, Thomas Built stated that the proposed requirement would require it to evaluate 140 bus/driver seat combinations for any given mirror system since certification testing would have to be conducted on each type of bus with each type of driver seat offered. Since Thomas Built estimated that evaluating one seat in one bus with one mirror system required about 80 man hours and \$125 of photographic materials, it viewed the testing necessary to evaluate 140 combinations as being overly burdensome.

Blue Bird criticized using a camera to measure compliance, citing such concerns as the camera's monocular vision, the burden to customers of many photographs and their duplication for documentation purposes, the camera's inability to define correctly the direct field of view, and its inability to consider adjustments made by humans in mirror visibility.

Transport Canada requested that video cameras be allowed, claiming that their use would permit viewing of images superior to those seen by

cameras. It also requested that the requirements provide more detail on the focal length of the camera lens.

After reviewing the comments, NHTSA agrees with Thomas Built that requiring testing at multiple points would be overly burdensome and would not yield significantly more worthwhile information. Upon reexamination, the agency now believes that a more appropriate procedure would be to allow testing to be done at any point within a specified area around the 25th percentile adult female driver's eye location. Such a procedure more accurately accounts for real-world situations in which drivers typically move their heads while they view mirror systems. Based on the above, the agency is changing S13.4 in this final rule to allow compliance with the standard at any one of the four points specified in Figure 3 (point "A," "B," "C," or "D") or at any single point within a semicircular area established by a 15.24 centimeter (6 inch) radius parallel to and forward of the center point. This viewing zone is illustrated in Figure 3. The agency anticipates that this modification will provide meaningful information about the driver's view of critical areas around the bus, while reducing the photographic time and cost factors mentioned by Thomas Built by 75 percent. The agency believes that if a vehicle manufacturer can establish compliance at one of the four testing points or any point in the semicircle, then that mirror system on that school bus should provide an adequate field-of view given the small size of the semicircle.

NHTSA believes that Blue Bird's concerns about a camera's monocular vision and its inability to define the direct field of view are philosophical in nature and relate to the inherent limitations of current technology. Given the available means to demonstrate objectively compliance with this standard, NHTSA is unaware of any other means that would be as effective, as practicable, and as easy to demonstrate as the use of a camera.

As for Mirror Lite's claim that the camera location specifications were ambiguous, the agency disagrees. NHTSA believes that difficulties in interpretation are unlikely, because the camera location specifications are well defined and easily achieved in actual testing situations.

As for Transport Canada's comment about video cameras, NHTSA has determined that this testing method is appropriate and should be permitted. Accordingly, the final rule at S13.4 has been modified. While video technology as a means for demonstrating

compliance with this standard may currently be less practicable than still photography, the agency believes that technological improvements may make video cameras a more viable option in the future. The agency therefore has decided not to preclude their use. To accommodate this modification, the term "film plane" has been changed to "image plane."

As for a lens focal length, the agency does not believe specifications about the focal length of lens are necessary. During the agency's mirror evaluations, lenses of various focal lengths were used to photograph the mirror images, including 50 mm to 250 mm lenses. While the ability to analyze the results was acceptable with all lenses, the agency noted that less enlargement was necessary when using a lens with a longer focal length. The agency believes it is reasonable to allow the entity conducting the test to select the type of camera and lens best suited to its purposes.

F. Miscellaneous Considerations

1. Certification

Thomas Built requested that the mirror manufacturer be responsible for certifying the image's quality and the bus manufacturer be responsible for certifying the field-of-view. It stated that this division of responsibility would simplify the testing and development process between mirror and bus manufacturer.

NHTSA notes that Thomas Built's suggested certification scheme would be inconsistent with the scheme set forth in Standard No. 111. That standard is a "vehicle" standard under which the vehicle manufacturer, and not the mirror manufacturer, is responsible for ensuring that a mirror complies with the standard. This ensures that vehicles equipped with noncomplying mirrors will be quickly remedied, without the need for a specific determination of whether the noncompliance arose because of an innate problem with the mirror or because of its installation on these particular vehicles. The agency does not believe there is any reason to change this scheme for school buses under Standard No. 111. Notwithstanding this conclusion, the agency notes that a vehicle manufacturer can establish in its purchase specifications whatever level of requirements it chooses for its suppliers and take appropriate actions if the supplier's products fail to conform to those specifications.

2. Retrofitting

Several commenters, including the National PTA and the National Education Association (NEA), advocated that NHTSA require existing school buses to be retrofitted to comply with the new requirements. The National PTA stated that the agency's decision not to retrofit existing school buses was "based more on a lack of regulatory courage than legal restrictions."

The agency's statutory authority under the National Traffic and Motor Vehicle Safety Act (the Safety Act; 15 U.S.C. 1381 *et seq.*) is to issue safety standards applicable to new motor vehicles and new items of motor vehicle equipment before their first consumer purchase. The Safety Act expressly provides that vehicles and items of equipment are not required to continue to comply with all applicable safety standards after their first purchase for purposes other than resale. See section 108(b)(1) of the Safety Act (15 U.S.C. 1397(b)(1)). Thus, NHTSA's safety standards regulate the manufacture and sale of new vehicles and items of motor vehicle equipment. Regardless of the agency's "regulatory courage," amendments to the safety standards do not and cannot require vehicles in service to comply with the requirements adopted in final rules.

However, the individual States do have the authority to regulate vehicles in service. Notwithstanding the lack of Federal authority to order school buses already in service to meet these amended requirements, the agency anticipates that many in-use school buses already comply with or will be retrofitted by State and local authorities to comply with these amended requirements.

3. Applying Requirements to Buses Other Than School Buses

New York State recommended the agency apply the new field-of-view requirements to all transit-type vehicles that transport the public.

NHTSA notes that New York's recommendation to apply the field-of-view requirements to non-school buses is beyond the scope of this rulemaking action, since the NPRM only proposed new requirements for school buses. The agency notes that the benefits of applying these requirements to transit buses appear questionable since most school bus-related incidents involve children under the age of seven. Notwithstanding the above discussion, the agency does not prohibit using "school bus" mirror systems on other types of buses.

4. Heated Mirrors

New York State and Moto Mirror requested that the agency require school buses to be equipped with heated mirrors, at least for those areas that experience cold weather.

NHTSA recognizes that some northern portions of the country experience weather conditions where mirror systems can become covered with ice and snow. While these conditions affect the potential effectiveness of the mirror systems, NHTSA believes that the responsibility for maintaining the mirror systems, and any part of the vehicle which affects the performance of the mirror systems, is best left with the State and local school districts. The agency further notes that since school buses are manufactured for use in all parts of the country, they must comply with all applicable standards. Therefore, it would be unreasonable to promulgate a national standard that would have little or no benefit for a significant part of the country.

5. Maximum Permissible Number of Mirrors

Several commenters addressed the number of mirrors with which a school bus should be equipped. R & R Research believed that the new standard should address the number of mirrors allowed on a school bus and the size of the mirrors. While the number of mirrors affect the time a driver needs to search visually the area around the bus, mirror size affects the blind spots created by the mirrors themselves. Transport Canada believed that the number of rear-view mirrors should be limited to one per side to avoid possible confusion produced by multiple images and reduce the total time drivers must divert their attention from the road ahead.

While NHTSA is aware of the situation mentioned by R & R Research and Transport Canada, no provision limiting the number of mirrors on school buses has been included in this final rule because the agency does not believe that there would be a safety benefit from such a limitation. The agency further notes that a major purpose for this rulemaking's field-of-view approach is to allow school bus users and manufacturers to determine the best mirror system for their particular operating environment.

6. Blind Spots

The NPRM requested comments about whether the mirrors would create dangerous blind spots in the driver's direct field-of-view, given the size and location of some convex cross view mirrors.

Several commenters believed that the agency should address the potential problems of blind spots created by mirrors. R & R Research believed that any new standard should address the mirror size, since this affects the blind spots created by the mirrors themselves. Transport Canada suggested that mirrors be located in areas that do not obstruct the driver's direct view of traffic and pedestrians. Thomas Built and a bus driver commented that while convex cross view mirrors do not create significant blind spots, side mounted driving mirrors may decrease visibility.

Other commenters believed that blind spots were not a significant safety problem. Arizona DOT stated that the increased field-of-view provided by mirrors offsets the corresponding blind spots. Blue Bird stated that blind spots created by a cross view mirror on one side of the bus can be viewed in the cross view mirror system on the other side of the bus.

NHTSA agrees with Arizona DOT that blind spots in the direct field-of-view created by mirrors themselves are offset by the larger indirect field-of-view provided by the mirror system. Although NHTSA does not believe it is appropriate to establish requirements for mirror locations, the agency does believe that mirror and school bus manufacturers should strive to develop mirror locations which limit the amount of obstruction to the driver's direct field of view.

7. Glare from Mirrors

The NPRM asked whether glare from some cross view mirror designs, caused by turn signals and other school bus lights, would reflect light from flashing turn signals into the driver's eye.

Of those who commented on this issue (Thomas Built, Blue Bird, Arizona, Mirror Lite, Tennessee), no commenter believed that glare caused a significant safety problem. Based on the comments, the agency does not believe that reflected light or glare from convex mirrors presents an unreasonable safety risk to school bus drivers.

8. Non-Mirror Systems

The NPRM discussed the docket comments received about mechanical and electronic devices which could be used either to keep students away from critical areas around the school bus or to alert school bus drivers to the presence of someone in a critical area around the bus. The agency explained that mirrors offer the most effective means of providing the school bus driver with a complete view in front of and along both sides of the bus. The agency believed that requiring these

additional non-mirror devices "would substantially increase compliance costs without significantly increasing safety benefits."

The Arizona DOT agreed that instead of requiring such devices, it would be more cost effective to evaluate their effectiveness through pilot programs. SCAN, the manufacturer of an electronic detection system, requested that the agency modify the field-of-view requirements to allow compliance through mirrors or sensing/detection devices. SCAN believed that the NPRM was unduly negative toward its type of product and requested that critical comments from Blue Bird and Thomas Built about non-mirror systems be stricken from the docket.

The agency continues to believe that, in terms of performance, reliability, and cost, mirrors offer the best means for school bus drivers to become aware of pedestrians in front of and along both sides of the bus. Accordingly, the agency does not agree with the SCAN's belief that sensing/detection devices should be allowed as a means of meeting the standard's field-of-view requirements. Notwithstanding this decision, sensing/detection devices may be used as supplementary devices on school buses.

G. Costs

In previous notices, NHTSA considered the rulemaking's expected cost. The ANPRM estimated that the unit cost for a System B convex cross view mirror with a bracket plus installation would range from \$52 to \$107. The NPRM explained that the costs of an additional convex cross view mirror would range from \$58 for a four 8" (17" ROC) convex mirror system to \$121 for an 8"x12" quadrispheric "Bus Boy" mirror system. The proposal noted that, since school bus manufacturers and users were free to choose what convex cross view mirror system they would use to comply with the performance requirements, those parties' choices would greatly affect the ultimate costs. However, the agency anticipated that the cost of complying with the proposed changes would be minimal because of the current State mirror specifications. For example, States that currently specify four 8" (17" ROC) convex mirrors on cross view tripods, at a cost of \$58.00, could switch to a pair of elliptical mirrors which cost nearly the same—\$58.10.

The NPRM requested comments about this proposal's cost to school bus users and information about current State requirements for school bus mirrors.

Several commenters, including States and school bus manufacturers, generally

agreed with the NPRM's cost estimates. The Arizona DOT and Tennessee DOE commented that the NPRM's cost estimates were accurate. Mirror Lite commented that the parts cost (i.e., mirrors and mounting arms) of four currently used standard 8" mirrors on a conventional bus is \$44; while, the cost of two Bus Boy mirrors and brackets would be \$51, a \$7 difference. While Mirror Lite did not provide a cost for installation, the agency believes that the installation cost for two Bus Boy mirrors would be approximately the same as four 8" convex mirrors, if two such mirrors are mounted on the same bracket.

A few commenters believed the rulemaking would result in significant additional costs. Moto Mirror, a mirror manufacturer, stated that the aftermarket cost of a dual set of motorized and heated mirrors would be \$362.05. The agency notes that these mirrors include motorized and heated features that the standard does not require. Blue Bird commented that available mirror systems that will meet the proposals have an additional cost of approximately \$115.00 per bus above the cost of the standard mirror system it currently uses. R&R Research believed that the cost of installation and adjustment may exceed the cost of the hardware for some mirror systems, but provided no details to support the statement.

After reviewing the available information, NHTSA believes that the NPRM's initial cost estimates are generally reasonable. With respect to System A costs, the agency notes that all buses are typically equipped with supplemental convex driving mirrors as part of their System A mirrors. Thus, no real change in these mirrors would be necessary for school bus users to meet System A requirements. As for R&R Research's concern about installation, the agency has discussed mirror installation with bus manufacturers and State and local school district officials at various school transportation trade shows and has not found any supporting information for R&R's claim.

As to Blue Bird's comment on the \$115 difference in the cost for a compliant mirror system, they were referring to a quadrispheric mirror system. They also inadvertently included the cost of the right and left side flat, rearview mirrors as part of the cost increase; this was not appropriate. Blue Bird resubmitted a cost increase of \$30 per bus, to the consumer, when equipped with a quadrispheric mirror system rather than the standard four 8" convex cross view mirror system. They further stated that as such mirror

systems gain popularity among the users, that cost will drop.

With regard to Thomas Built's estimate of 80 man hours needed to complete a compliance test of a single bus-seat-mirror combination, it has been the agency's experience, through VRTC, that about ten man hours are necessary to do this type of test. Included in the agency's time estimate are such tasks as locating the cylinders around the bus, adjusting the mirrors, mounting a camera tripod in the driver's seat area, taking slides, processing film, and analyzing slides. The agency's estimate does not include one-time tasks such as setting up a grid of one foot by one foot squares and the constructing the test cylinders. Although many bus-seat-mirror configurations will need to be tested, once a particular configuration has been certified to meet the standard, that configuration will not need to be retested in subsequent years. Therefore, such one-time test costs would be distributed over the years that such a configuration is in use. Also, the agency believes that a limited number of design changes in bus exteriors and/or drivers' seats occur from year to year and any differences in the location of the 25th percentile adult female's eye location that do occur would be small and should not greatly affect the driver's direct or indirect field of view. These eye location differences among seats would, however, establish a compliance "envelope" spanning the eye locations that allow compliance with the standard. Thus, further reductions in time and cost would occur by not having to test any new configurations that would have minute eye location differences between previously tested configurations. Finally, the agency expects that further time savings will occur as more and more tests are performed.

H Leadtime Requirements

The NPRM explained that many mirror systems are now available which would comply with the proposed field-of-view requirements, and thus would not create leadtime constraints from that perspective. Nevertheless, the agency believed that school bus manufacturers and users should be afforded time to investigate and select how they wish to comply with the new field-of-view requirements. Accordingly, the agency proposed an effective date of one year after publication of the final rule.

Several commenters addressed the leadtime necessary for this rulemaking. The NEA favored having the final rule become effective as soon as possible. The Arizona DOT stated that there currently are mirrors that could be used

to comply with the one year leadtime requirements. NSTA requested a leadtime of 18 months after publication of the final rule for the effective date, claiming that additional time was necessary to allow school districts to budget for the additional costs associated with the rulemaking.

After reviewing the comments, the agency continues to believe that a one-year leadtime after the final rule's publication provides adequate time for school bus manufacturers and users to determine how to comply with the new field-of-view requirements. The agency notes that most school bus manufacturers are already familiar with all of the brands of mirrors. The extra six months requested by NSTA is not warranted on the basis of other comments.

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the costs and other impacts of this rulemaking, and a Final Regulatory Evaluation (FRE) has been prepared and placed in the docket. Based on this evaluation, the agency has determined that the rulemaking is not "major" within the meaning of Executive Order 12291. However, it is "significant" within the meaning of the Department of Transportation's regulatory policies and procedures.

As explained in the FRE, the additional cost of installing a pair of compliant convex cross view mirrors on a new school bus could range from no cost to as much as \$30 per school bus, depending on the type of mirror system selected by the school district. About 38,000 new school buses are sold each year, and according to Blue Bird about 12 percent of all their buses are equipped with a compliant mirror system. Therefore, assuming Blue Bird's

sales breakdown is representative of the overall bus manufacturing industry, about 33,440 buses ($38,000 \times 88$ percent) will have to be equipped with a compliant system. Therefore, the aggregate annual cost to consumers would range from no cost to about \$1,003,200. ($33,400 \times \$30$ per bus).

NHTSA anticipates that the actual costs will likely be nearer the lower end of the estimated cost range for the following reasons. Buyers will probably select lower cost mirrors since they are quite sensitive to cost. At the same time, economies of scale and competition will lower the costs of the more expensive mirrors. The agency further notes that since nearly all States now require school buses to have more mirrors than required by FMVSS No. 111, the costs of complying with this rulemaking could even result in a cost savings for those school buses being sold in jurisdictions where buses are currently equipped with more expensive mirrors than a mirror system that will now be allowed under the amendments.

As mentioned in this notice's "background" section, an average of 26 students are fatally injured and another 283 are injured when struck by their own school bus. While the effectiveness of upgrading the requirements for school bus mirrors cannot be conclusively established, accounts in the NAS report and docket comments indicate that some injuries and fatalities will be avoided.

Regulatory Flexibility Act

NHTSA has considered the effects of this action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. School bus manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Small governmental units and small organizations are generally affected by amendments to the Federal motor vehicle safety standards as purchasers of new school buses. However, as discussed above, such entities that purchase school buses should see little change with regard to the price of new buses that are equipped with compliant mirrors. In addition, the agency notes that less than six mirror manufacturers provide nearly all of the school bus mirrors in use today. Although they are small companies, each has a full product line, including mirrors that can meet the amended standard. Thus, the likely impact should only be a shift in sales of particular mirror types. Accordingly, the agency has determined that preparation of a

regulatory flexibility analysis is unnecessary.

Executive Order 12612 (Federalism)

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that it does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

In its analysis, the agency considered the amendment's likely effect on the States and possible alternatives to the rulemaking. The agency has determined that virtually all States require school buses to be equipped with more mirrors than current Standard No. 111 requires. As this preamble explained earlier, the amendment provides general performance-oriented requirements that the States may exceed. Although the amendments will supersede the current school bus mirror requirements of a large number of States, any required State regulatory changes will only involve a relatively minor administrative or legislative action that should not require extensive discussion or debate, since the change will improve the level of driver visibility. In addition, because the amendment eliminates current specific requirements which serve to prohibit certain mirror designs, the rulemaking provides additional flexibility to the States. The agency further notes that the amended requirements are similar to the recommendation approved by 86 percent of the State representatives at the 11th National Conference on School Transportation. In addition, State commenters to the NPRM favored the field-of-view requirements. NHTSA accordingly does not expect any significant adverse effect on the States as a result of this rulemaking.

National Environmental Policy Act

NHTSA has also analyzed this rulemaking action for purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment. Although there will likely be an increase in production of certain mirror types, this increase will not introduce any new or particularly harmful effects to the environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicle.

PART 571—Federal Motor Vehicle Safety Standards

In consideration of the foregoing, 49 CFR part 571 is amended, as follows:

1. The authority citation for part 571 of title 49 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.111 [Amended]

2. In § 571.111, S4 is amended by adding the following definition in alphabetical order.

* * * * *

Effective mirror surface means the portions of a mirror that reflect images, excluding the mirror rim or mounting brackets.

* * * * *

3. In § 571.111, S9 through S9.2(b) is revised and a new S9.3 through S9.4(b)(2) is added, to read as follows:

S9. Requirements for School Buses. When a school bus is tested in accordance with the procedures of S13, it shall meet the requirements of S9.1 through S9.4.

S9.1 Outside Rearview Mirrors. Each school bus shall have two outside rearview mirror systems: System A and System B.

S9.2 System A shall be located with stable supports so that the portion of the system on the bus's left side, and the portion on its right side, each:

(a) Includes at least one mirror of unit magnification with not less than 322.60 square centimeters (50 square inches) of reflective surface; and

(b) Includes one or more mirrors which together provide, at the driver's eye location, a view of:

(1) For the mirror system on the right side of the bus, the entire top surface of cylinder N in Figure 2, and of that area of the ground which extends rearward from the mirror surface not less than 60.93 meters (200 feet).

(2) For the mirror system on the left side of the bus, the entire top surface of cylinder M in Figure 2, and of that area of the ground which extends rearward from the mirror surface not less than 60.93 meters (200 feet).

S9.3(a) For each of the cylinders A through P whose entire top surface is not directly visible from the driver's eye location, System B shall provide, at that location:

(1) A view of the entire top surface of that cylinder.

(2) A view of the ground that overlaps with the view of the ground provided by system A.

(b) Each mirror installed in compliance with S9.3(a) shall meet the following requirements:

(1) Each mirror shall have a projected area of at least 258.08 square centimeters (40 square inches), as measured on a plane at a right angle to the mirror's axis.

(2) Each mirror shall be located such that the distance from the center point of the eye location of a 25th percentile adult female seated in the driver's seat to the center of the mirror shall be at least 95.25 centimeters (37.5 inches).

(3) Each mirror shall have no discontinuities in the slope of the surface of the mirror.

(4) Each mirror system shall be installed with a stable support designed to dampen vibration.

(c) Each school bus which has a mirror installed in compliance with S9.3(a) that has an average radius of curvature of less than 88.90 centimeters (35 inches), as determined under S12, shall have a label visible to the seated driver. The label shall be printed in a type face and color that are clear and conspicuous. The label shall state the following:

"USE CROSS VIEW MIRRORS TO VIEW PEDESTRIANS WHILE BUS IS STOPPED. DO NOT USE THESE MIRRORS TO VIEW TRAFFIC WHILE BUS IS MOVING. IMAGES IN SUCH MIRRORS DO NOT ACCURATELY SHOW ANOTHER VEHICLE'S LOCATION."

S9.4(a) Each image required by S9.3(a)(1) to be visible at the driver's eye location shall be separated from the edge of the effective mirror surface of the mirror providing that image by a distance of not less than 3 minutes of arc.

(b) The image required by S9.3(a)(1) of cylinder P shall meet the following requirements:

(1) The angular size of the shortest dimension of that cylinder's image shall be not less than 3 minutes of arc; and

(2) The angular size of the longest dimension of that cylinder's image shall be not less than 9 minutes of arc.

4. Section 571.111 is amended by adding a new S13 through S13.6, to read as follows:

S13 School bus mirror test procedures. The requirements of S9.1 through S9.4 shall be met when the vehicle is tested in accordance with the following conditions.

S13.1 The cylinders shall be a color which provides a high contrast with the surface on which the bus is parked.

S13.2 The cylinders are 0.3048 meters (1 foot) high and 0.3048 meters (1 foot) in diameter, except for cylinder P which is 0.9114 meters (3 feet) high and 0.3048 meters (1 foot) in diameter.

S13.3 Place cylinders at locations as specified in S13.3(a) through S13.3(g) and illustrated in Figure 2. Measure the

distances shown in Figure 2 from a cylinder to another object from the center of the cylinder as viewed from above.

(a) Place cylinders G, H, and I so that they are tangent to a transverse vertical plane tangent to the forward-most surface of the bus's front bumper. Place cylinders D, E, F so that their centers are located in a transverse vertical plane that is 1.8288 meters (6 feet) forward of a transverse vertical plane passing through the centers of cylinders G, H, and I. Place cylinders A, B, and C so that their centers are located in a transverse vertical plane that is 3.6576 meters (12 feet) forward of the transverse vertical plane passing through the centers of cylinders G, H, and I.

(b) Place cylinders B, E, and H so that their centers are in a longitudinal vertical plane that passes through the bus's longitudinal centerline.

(c) Place cylinders A, D, and G so that their centers are in a longitudinal vertical plane that is tangent to the most

outboard edge of the left side of the bus's front bumper.

(d) Place cylinders C, F, and I so that their centers are in a longitudinal vertical plane that is tangent to the most outboard edge of the right side of the bus's front bumper.

(e) Place cylinder J so that its center is in a longitudinal vertical plane 0.3048 meters (1 foot) to the left of the longitudinal vertical plane passing through the centers of cylinders A, D, and G, and is in the transverse vertical plane that passes through the centerline of the bus's front axle.

(f) Place cylinder K so that its center is in a longitudinal vertical plane 0.3048 meters (1 foot) to the right of the longitudinal vertical plane passing through the centers of cylinders C, F, and I, and is in the transverse vertical plane that passes through the centerline of the bus's front axle.

(g) Place cylinders L, M, N, O, and P so that their centers are in the transverse vertical plane that passes through the centerline of the bus's rear axle. Place

cylinder L so that its center is in a longitudinal vertical plane that is 1.8288 meters (6 feet) to the left of the longitudinal vertical plane tangent to the bus's most outboard left surface (excluding the mirror system). Place cylinder M so that its center is in a longitudinal vertical plane that is 0.3048 meters (1 foot) to the left of the longitudinal vertical plane tangent to the left side of the bus. Place cylinder N so that its center is in a longitudinal vertical plane that is 0.3048 meters (1 foot) to the right of the longitudinal vertical plane tangent to the right side of the bus. Place cylinder O so that its center is in a longitudinal vertical plane that is 1.8288 meters (6 feet) to the right of the longitudinal vertical plane tangent to the right side of the bus. Place cylinder P so that its center is in a longitudinal vertical plane that is 3.6576 meters (12 feet) to the right of the longitudinal vertical plane tangent to the right side of the bus.

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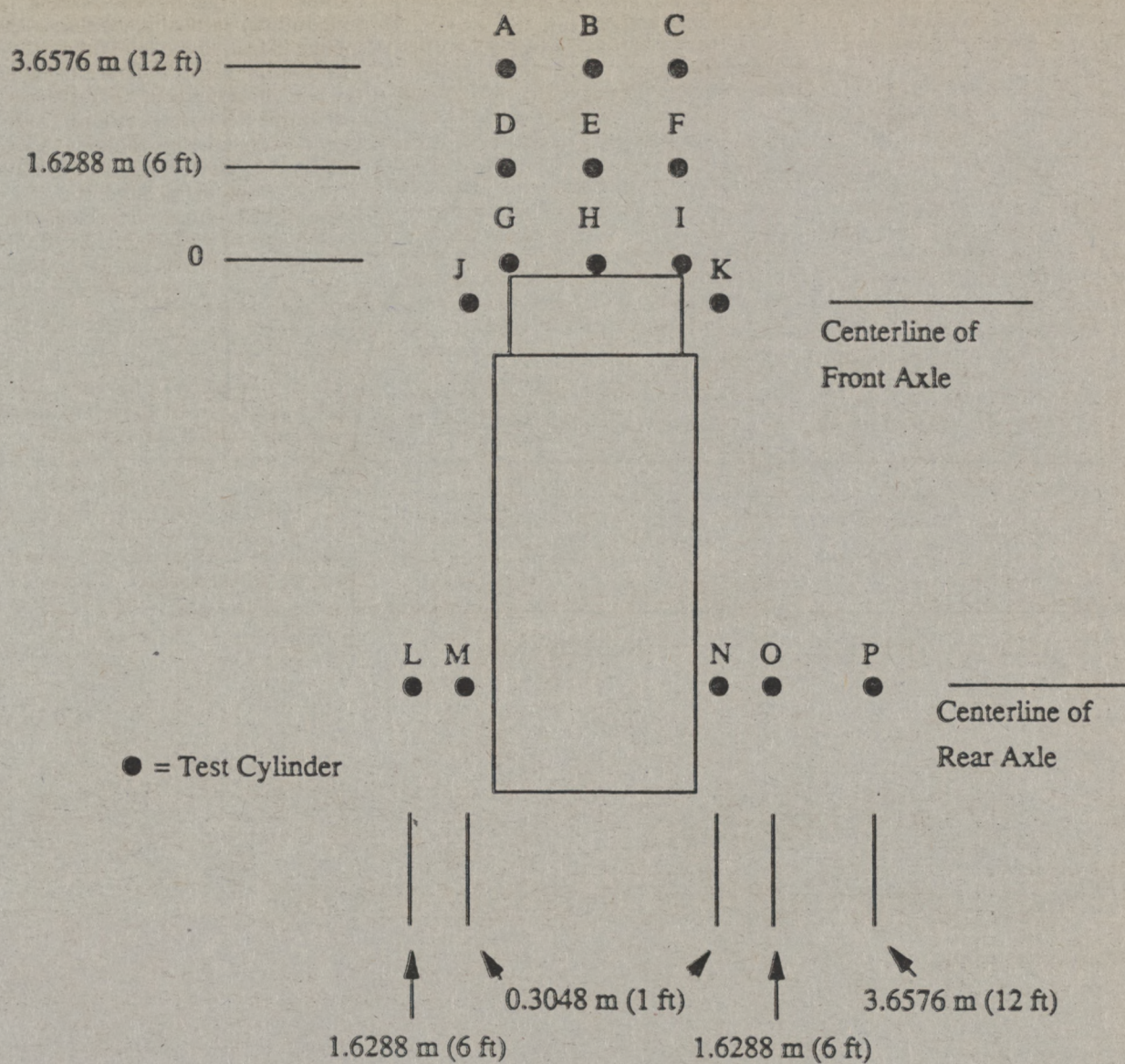


Figure 2.

Location of Test Cylinders for School Bus Field-of-View Test

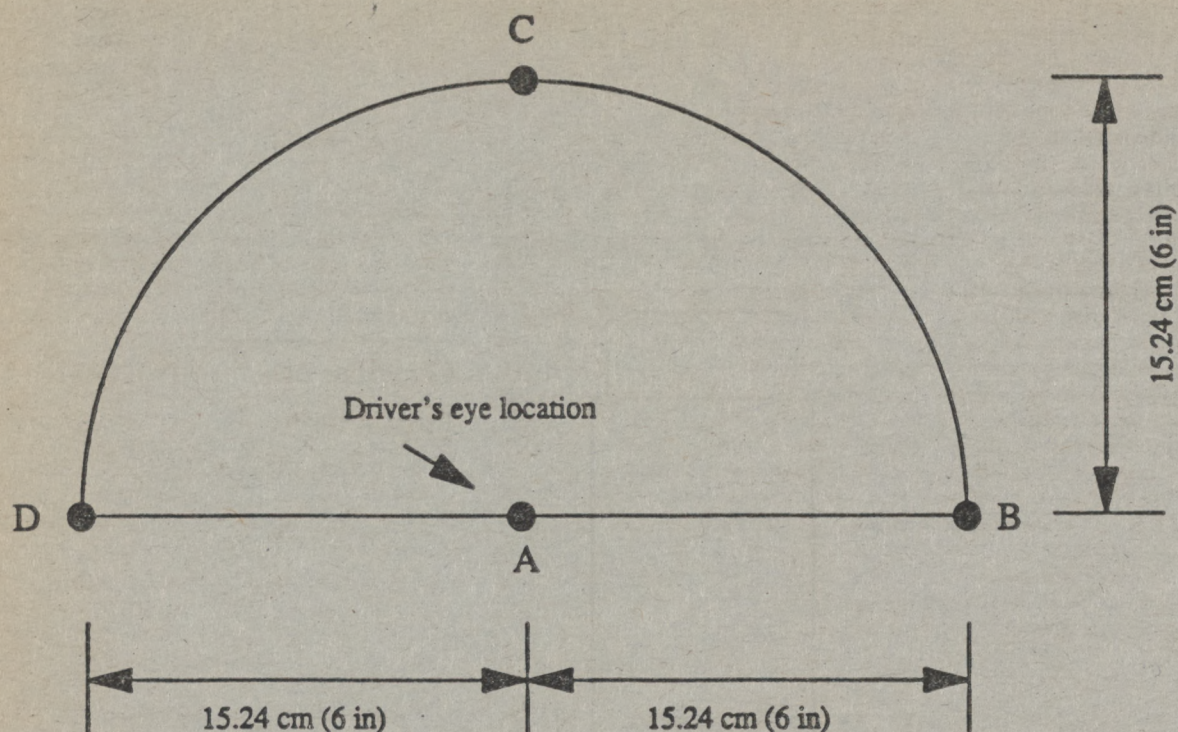


Figure 3.

Camera Locations for School Bus Field-of-View Test

BILLING CODE 4810-59-C

S13.2 The driver's eye location is the eye location of a 25th percentile adult female, when seated in the driver's seat as follows:

(a) The center point of the driver's eye location is the point located 68.58 centimeters (27 inches) vertically above the intersection of the seat cushion and the seat back at the longitudinal centerline of the seat.

(b) Adjust the driver's seat to the midway point between the forward-most and rear-most positions, and if separately adjustable in the vertical direction, adjust to the lowest position. If an adjustment position does not exist at the midway point, use the closest adjustment position to the rear of the

midpoint. If a seat back is adjustable, adjust the seat back angle to the manufacturer's nominal design riding position in accordance with the manufacturer's recommendations.

S13.3 Adjustable mirrors are adjusted before the test in accordance with the manufacturer's recommendations. Such mirrors are not moved or readjusted at any time during the test.

S13.4 Place a 35 mm or larger format camera, or video camera, so that its image plane is located at the center point of the driver's eye location or at any single point within a semicircular area established by a 15.24 centimeter (6 inch) radius parallel to and forward of

the center point (see figure 3). With the camera at any single location on or within that semicircle look through the camera and the windows of the bus and determine whether the entire top surface of each cylinder is directly visible.

S13.5 For each cylinder whose entire top surface is determined under paragraph 13.4 of this section not to be directly visible at the driver's eye location,

(a) Place a comparison chart (see figure 4) above the mirror that provides the fullest view of the cylinder in situations where a cylinder is partially visible through more than one mirror.

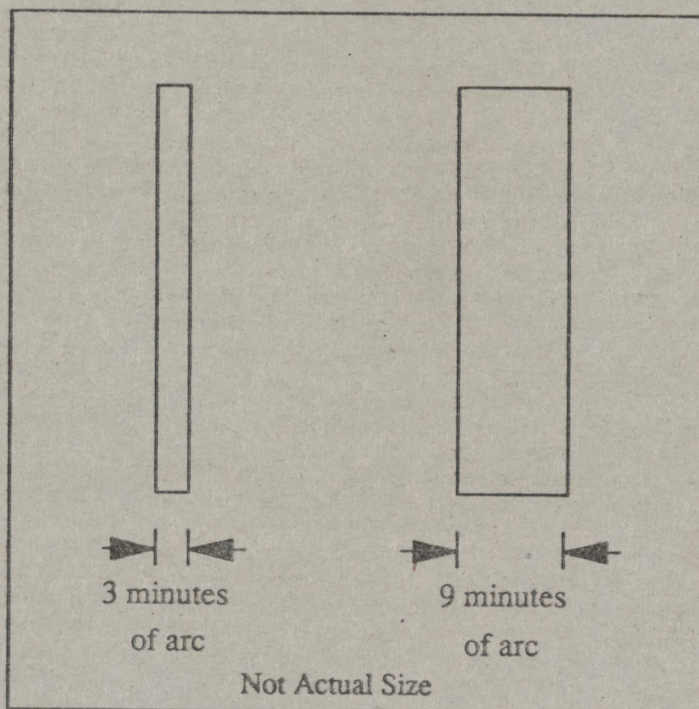


Figure 4.

Comparison Chart for Indirect Field-of-View Measurements

The width of the bars in Figure 4 indicating three minutes of arc and nine minutes of arc are derived from the following formula:

For 3 minutes of arc:
 $X = D \times 0.000873$,

Where:
 X = the width of a line, in the unit of measurement D , representing 3 minutes of arc;
 D = distance from center point of driver's eye location to the center of the mirror's surface; and
 0.000873 = tangent of 3 minutes of arc.

For 9 minutes of arc:

$X = D \times 0.002618$,

Where:
 X = the width of a line, in the unit of measurement D , representing 9 minutes of arc;
 D = distance from center point of driver's eye location to the center of the mirror's surface; and
 0.002618 = tangent of 9 minutes of arc.

(b) Photograph each cylinder through the mirror(s) that provides a view of the cylinder. Photograph each cylinder with the camera located so that the view through its film or image plane is located at any single location within the semicircle established under 13.4, [POINT A,B,C, OR D] ensuring that the image of the mirror and comparison chart fill the camera's view finder to the extent possible.

13.6 Make all observations and take all photographs with the service/entry door in the closed position and the stop signal arm(s) in the fully retracted position.

Issued on: November 24, 1992.

Marion C. Blakey,

Administrator.

[FR Doc. 92-29053 Filed 12-1-92; 8:45 am]

BILLING CODE 4910-59-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88-21; Notice No. 5]

Federal Motor Vehicle Safety Standards; Bus Emergency Exits and Window Retention and Release

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This rule corrects an error made in a November 2, 1992, final rule amending Federal Motor Vehicle Safety Standard No. 217, Bus Emergency Exits and Window Retention and Release. The conversion to metric units of the formula for determining the amount of exit area which must be provided was incorrectly performed. In addition, a table and three figures referred to in the regulatory language of the final rule were omitted.

DATES: The amendment made by this rule is effective May 2, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia Breslin, NRM-10, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366-0842.

SUPPLEMENTARY INFORMATION: On November 2, 1992, NHTSA issued a final rule amending Federal Motor Vehicle Safety Standard No. 217, Bus Emergency Exits and Window Retention and Release, to revise the minimum requirements for school bus emergency exits, to improve access to school bus emergency doors, and to improve the visibility of school bus emergency exits.

This notice corrects several errors in that final rule. First, pursuant to E.O. 12770, Metric Usage in Federal Government Programs (56 F.R. 35801; July 29, 1991), the agency is in the process of converting all safety standards to metric units. Therefore, metric equivalents, rounded to the nearest whole unit, were used in the regulatory text of the final rule. However, the formula for determining the amount of exit area which must be provided was incorrectly converted. The notice of proposed rulemaking preceding the recent final rule proposed to require that school buses provide minimum emergency exit spaces which together are equal, in square inches, to 67 times the number of seating positions. This formula was erroneously converted in the final rule to centimeters, not square centimeters. The final rule should have specified that school buses are required to provide minimum emergency exit spaces which together are equal in square centimeters, to 432 times the number of seating positions, not 170 times the number of seating positions. (Note: A notice of proposed rulemaking published the same day as the final rule also erroneously used the latter figure (57 FR 49444). If a final rule is issued based on that notice, the correct figure will be used.)

Second, as part of the final rule, S5.4.2.1(a)(2) was amended to specify a zone which must be kept clear to provide access to a side emergency door. The regulatory language refers to three figures, Figure 5A, Figure 5B, and Figure 5C, which illustrate these requirements. These figures were omitted from the copies of the final rule sent to the **Federal Register**. The final rule also amended S5.5.3(c) to require marking of emergency exits with retroreflective tape which meets intensity criteria specified in Table 1. Table 1 was also omitted from the final rule.

This correction imposes no duties or responsibilities on any party not already imposed by the final rule. Discussion in the preamble to the final rule makes it clear that the agency did not intend to change the formula and that the error was merely a conversion error. The figures and table clarify obligations imposed by the final rule. Accordingly, NHTSA finds for good cause that notice and opportunity for comment are necessary.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR § 571.217 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.217 [Amended]

2. Paragraph S5.2.3.1 of Standard No. 217 is revised to read as follows:

§ 5.2.3.1 Each bus shall be equipped with the exits specified in either § 5.2.3.1(a) or § 5.2.3.1(b), chosen at the option of the manufacturer. The area in square centimeters of the unobstructed openings for emergency exit shall collectively amount to at least 432 times the number of designated seating positions in the bus. The amount of emergency exit area credited to an emergency exit is based on the daylight opening of the exit opening.

(a)(1) One rear emergency door that opens outward and is hinged on the right side (either side in the case of a bus with a GVWR of 4,536 kilograms or less), and exits providing an additional emergency exit area (AEEA) calculated in accordance with the following formula:

$$AEER = [TA - FSDA - RDEA]$$

Where:

TA (total area) = 432 × number of designated seating positions;

FSDA (front service door area) = size of the available front service door opening; and

RDEA (rear door exit area) = size of the available rear emergency exit door opening.

(2) The exits installed to provide the AEEA shall be of the types specified in paragraphs (i) through (iii) of this section, selected in the sequence specified in those paragraphs—

(i) A left side emergency exit door that meets the requirements of § 5.2.3.2(a);

(ii) An emergency roof exit that meets the requirements of § 5.2.3.2(b);

(iii) Any of the following types of exits, if necessary to provide the AEEA: Side emergency exit doors that meet the requirements of § 5.2.3.2(a), emergency roof exits that meet the requirements of § 5.2.3.2(b), or emergency window exits that meet the requirements of § 5.2.3.2(c), at the option of the manufacturer.

(b)(1) One emergency door on the vehicle's left side that is hinged on its forward side and meets the requirements of § 5.2.3.2(a), and a push-out rear window that provides a minimum opening clearance 41 centimeters high and 122 centimeters wide and meets the requirements of § 5.2.3.2(c), and exits providing an additional emergency exit area (AEEA)

calculated in accordance with the following formula:

$AEEA = [TA - FSDA - SDEA - POWA]$

Where:

TA (total area) = 432 × number of designated seating positions;

FSDA (front service door area) = size of the available front service door opening;

SDEA (side door exit area) = size of the available size emergency exit door opening; and

POWA (push-out window area) = size of the available rear emergency push-out window opening.

(2) The exits installed to provide the AEEA shall be of the types specified in paragraphs (i) through (iii) of this

section, selected in the sequence specified in those paragraphs—

(i) A right side emergency exit door that meets the requirements of § 5.2.3.2(a);

(ii) An emergency roof exit that meets the requirements of § 5.2.3.2(b);

(iii) Any of the following types of exits, if necessary to provide the AEEA: Side emergency exit doors that meet the requirements of § 5.2.3.2(a), emergency roof exits that meet the requirements of § 5.2.3.2(b), or emergency window exits that meet the requirements of § 5.2.3.2(c), at the option of the manufacturer.

(c) The area of an opening equipped with a wheelchair lift is counted toward meeting the AEEA requirement under paragraph (a) or (b) of this section only if the lift is of a design which allows it to be folded or stowed in such a manner that the area is available for use by persons not needing the lift. The daylight opening of such an exit is calculated with the lift in the folded or stowed position.

3. New Figures 5A, 5B, and 5C are added, to appear following figure 4 at the end of § 571.217, as follows:

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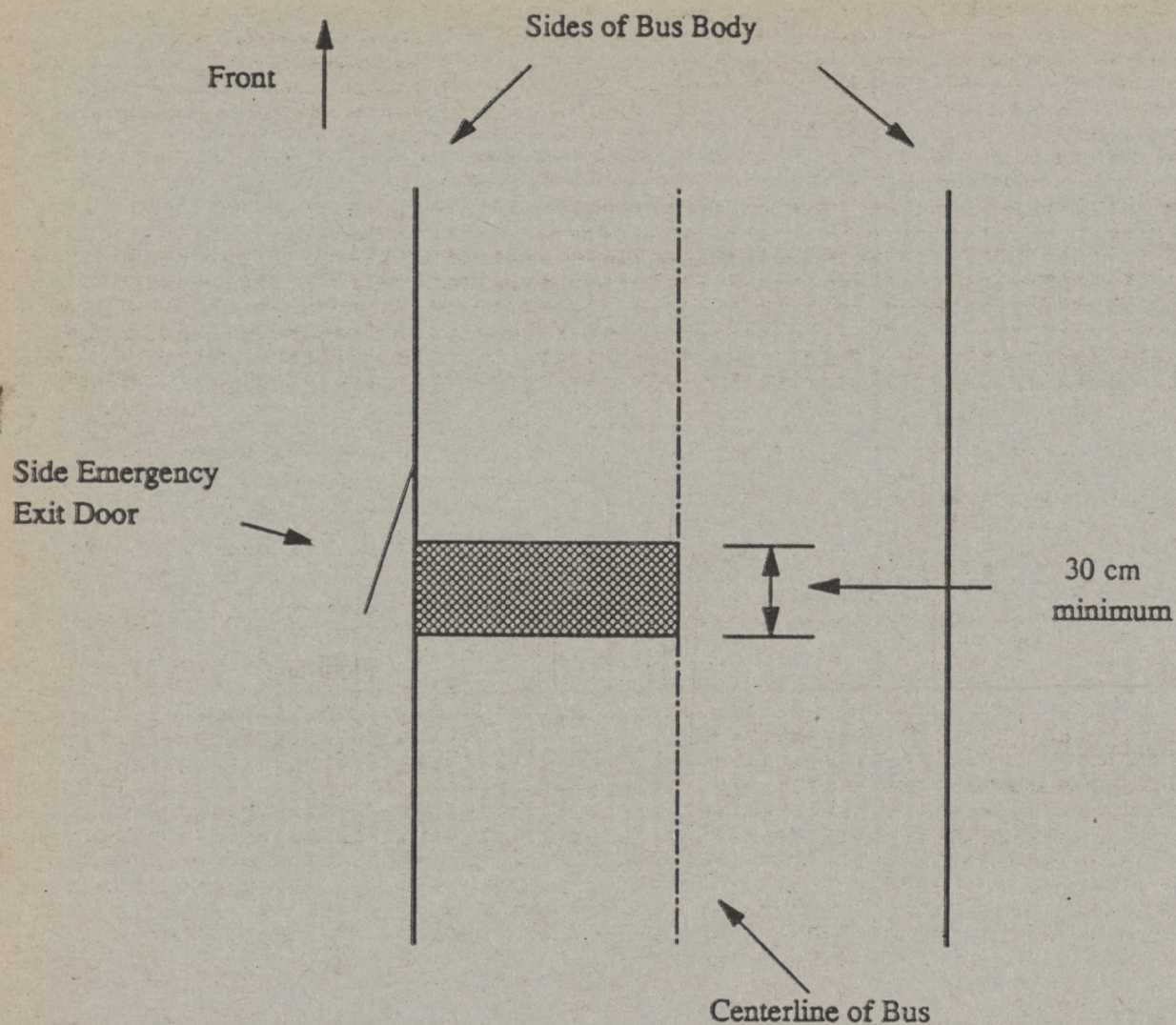


Figure 5A. Minimum Side Emergency Exit Clearance Specifications (Plan View)

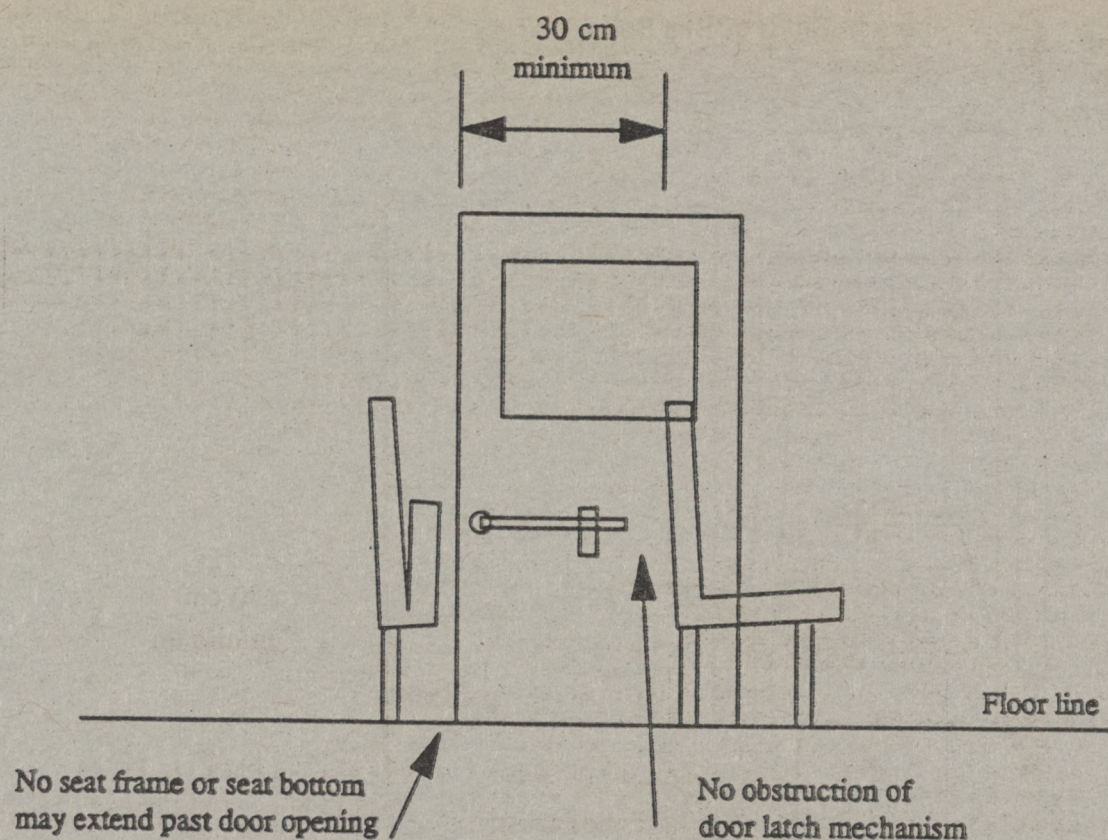


Figure 5B. Minimum Side Emergency Exit Flip-Up Seat Clearance Specifications

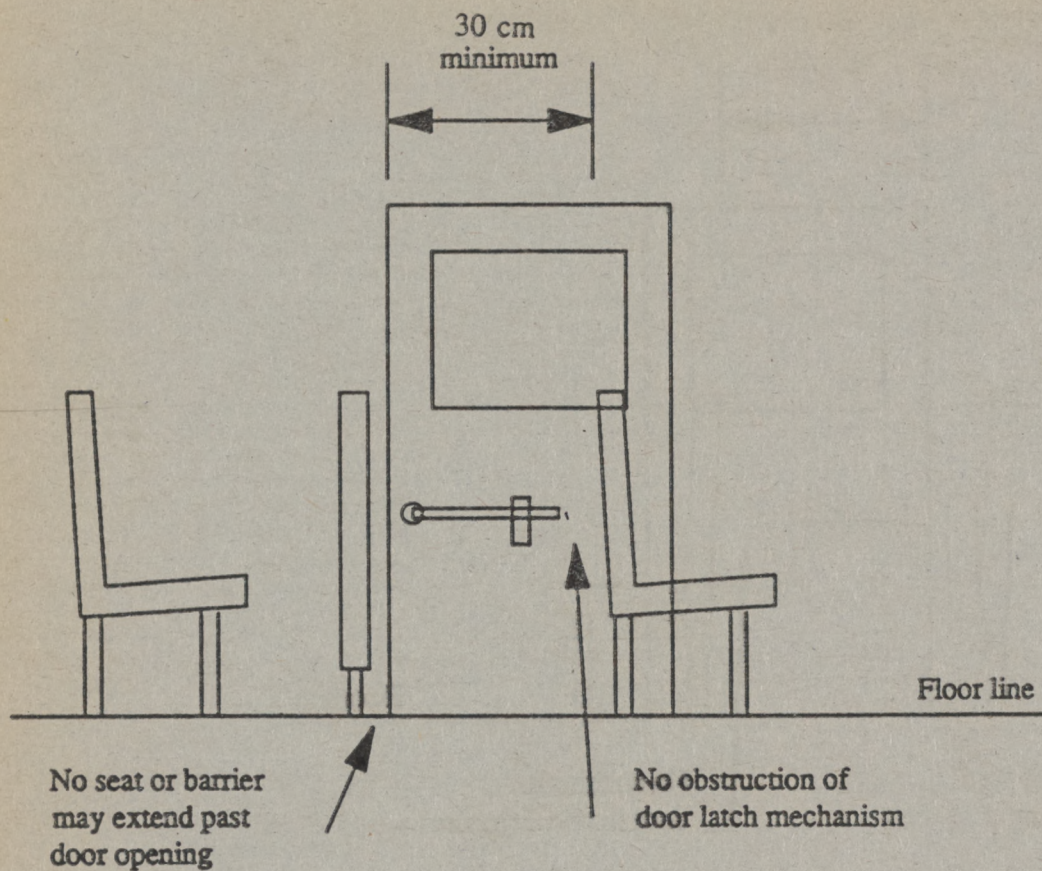


Figure 5C. Minimum Side Emergency Exit Clearance Specifications

BILLING CODE 4910-59-C

4. New Table 1 is added, to appear following figure 5C at the end of § 571.217, as follows:

Issued on: November 24, 1992.

Marion C. Blakey,
Administrator.

BILLING CODE 4910-59-M

Table 1. Minimum Specific Intensity Per Unit Area (SIA)

(Candelas per Footcandle Per Square Foot)

Type III Retroreflective Material

A - Glass Bead Retroreflective Element Material

Observation Angle (°)	Entrance Angle (°)	White	Red	Yellow
0.2	-4	250	45	170
0.2	+30	150	25	100
0.5	-4	95	15	62
0.5	+30	65	10	45

B - Prismatic Retroreflective Element Material

Observation Angle (°)	Entrance Angle (°)	White	Red	Yellow
0.2	-4	250	45	170
0.2	+30	95	13.3	64
0.5	-4	200	28	136
0.5	+30	65	10	45

[FR Doc. 92-29131 Filed 12-1-92; 8:45 am]

BILLING CODE 4910-59-C

Proposed Rules

Federal Register

Vol. 57, No. 232

Wednesday, December 2, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-31512; File No. S7-36-92]

RIN 3235-AD79

Net Capital Rule

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments.

SUMMARY: The Securities and Exchange Commission is proposing for comment amendments to its net capital rule under the Securities Exchange Act. The proposal would raise the base minimum net capital requirements applicable to broker-dealers that introduce customer accounts but do not receive customer securities to \$25,000. The minimum net capital requirement applicable to other classes of broker-dealers that never receive customer securities would be increased from \$5,000 to \$10,000. Broker-dealers that make markets in securities would be required to maintain net capital equal to \$2,500 for each security in which they make a market regardless of the price of the security.

The proposed amendments are designed to strengthen the Commission's financial responsibility rules and are intended to improve the commission's ability to protect the customers and creditors of a broker-dealer in the event of the broker-dealer's insolvency. The Commission requests comment on the proposed amendments.

DATES: Comments to be received on or before February 5, 1993.

ADDRESSES: Persons wishing to submit written comments should file three copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All comment letters should refer to File No. S7-36-92. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, (202) 272-2904, Michael P. Jamroz, (202) 272-2372, or Roger G. Coffin, (202) 272-7375, Division of Market Regulation, 450 Fifth Street, NW., Washington, DC 20549.

Table of Contents

- I. Introduction
 - A. The Commission's Proposal and Commission Action
 - B. Brief Summary of Comments
- II. The Net Capital Rule
- III. Proposals Based on Firm Type
 - A. Introducing Firms
 - (i) Introduction
 - (ii) Need for Increases
 - (iii) Industry Impact
 - B. Over-the-Counter Market Makers
 - C. Mutual Fund and all other Broker-Dealers
- IV. Phase-In Schedule
- V. Summary of Initial Regulatory Flexibility Analysis
- VI. Statutory Analysis
- VII. List of Subjects in 17 CFR Part 240
- VIII. Text of the Proposed Amendments

SUPPLEMENTARY INFORMATION:

I. Introduction

A. The Commission's Proposal and Summary of Commission Action

On September 15, 1989, the Commission issued a release requesting comment on proposed increases to the minimum net capital requirements applicable to broker-dealers.¹ The Commission was concerned that the minimum net capital requirements, which in some cases dated back to 1972, were no longer adequate.

In that release, the Commission proposed increases in the minimum capital requirements for registered broker-dealers, based on the nature of the business of the firm, and the extent to which the broker-dealer has contact with customer securities. For example, firms that carry customer accounts would have been required to maintain at least \$250,000 of net capital. Firms that introduce customer accounts to other broker-dealers would have been required to maintain minimum net capital of \$100,000 or \$50,000, depending upon whether the firm routinely or occasionally received securities. Under the proposal, broker-

dealers that do not receive securities would have been allowed to maintain minimum net capital of \$5,000.

The Commission is separately adopting most of the amendments set forth in the 1989 proposal.² This release proposes for comment additional increases to the minimum net capital requirements applicable to certain broker-dealers in securities.

B. Brief Summary of Comments

The Commission received almost 275 letters in response to the proposed rule changes. The majority of the commentators objected generally to the proposed increases in minimum net capital requirements. Most of the commentators objected to the proposed increases to the net capital requirements for introducing and mutual fund broker-dealers. Primarily, these firms feared that an increase in minimum net capital requirements would restrict entry into the securities business and would force existing entities to close. Another common complaint was that the proposal discriminated against smaller firms in favor of larger enterprises without sufficient justification.

Self-regulatory organizations and other groups including the New York Stock Exchange ("NYSE"), the Securities Industry Association ("SIA"), the American Bar Association, the Chicago Bar Association, the Philadelphia Stock Exchange ("Phlx"), and the Midwest Stock Exchange generally supported the Commission's proposal. These commentators acknowledged the need to increase minimum net capital requirements and supported the general concerns set forth in the release proposing the amendments for comment.

The National Association of Securities Dealers ("NASD"), made specific recommendations with respect to the level of capital that should be required of introducing broker-dealers and other categories of broker-dealers that do not handle customer securities. As described further in the Commission's adopting release and in this release, the NASD's recommendation has, in large part, served as the framework for the requirements applicable to introducing and mutual fund firms that are being implemented.

¹ Securities Exchange Act Release No. 27249 (September 15, 1989), 54 FR 40395 (October 2, 1989). All comments are available in File No. S7-28-89 at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

² Securities Exchange Act Release No. 31511, (November 24, 1992).

II. The Net Capital Rule

The Commission's net capital rule requires that every registered broker-dealer maintain a certain specified minimum level of net capital.³ The rule requires registered broker-dealers to maintain sufficient liquid assets to enable those firms that fall below the minimum net capital requirements to liquidate in an orderly fashion without the need for a formal proceeding. The rule prescribes required minimum levels based both upon the method the firm adopts in computing its net capital, and the type of securities business it conducts. These levels were designed to address the risks perceived in the different types of businesses engaged in by broker-dealers. For example, if a broker-dealer carries no customer accounts and limits its business to certain specified activities, it needs to maintain only \$5,000 in net capital. One of the specified activities permitted is the introducing, on a fully disclosed basis, of customer accounts to another broker-dealer that clears and carries the accounts.

The net capital rule recognizes that other categories of broker-dealers, because of the nature of the business they transact, require more net capital than introducing brokers. For example, if a broker-dealer makes markets in securities, it must maintain the greater of: its base minimum net capital requirement; or \$2,500 for each security priced over \$5 in which it makes a market, plus \$500 for each security priced \$5 or less in which it makes a market.⁴ Unless required to do so because of the market maker's ratio requirement, regardless of how many securities in which it makes a market, the firm is not currently required to maintain net capital greater than \$100,000 to support its market making activities.⁵ In conjunction with the amendments contained in the adopting release, the Commission has preliminarily decided to propose for comment the following amendments.

³ Generally, net capital, as defined by Rule 15c3-1, is a broker-dealer's net worth plus liabilities subordinated in accordance with Appendix D of the rule, minus assets not readily convertible into cash and certain percentages, or haircuts, of a firm's securities and commodities positions.

⁴ See Securities Exchange Act Rule 15c3-1(a)(4); 17 CFR 240.15c3-1(a)(4). The Commission's adopting release amended paragraph (a)(4) to require \$1,000 for each security priced \$5 or less.

⁵ The Commission's adopting release amended paragraph (a)(4) to raise this ceiling from \$100,000 to \$1,000,000.

III. Proposals Based on Firm Type

A. Introducing Firms

(i) Introduction

Under the version of Rule 15c3-1 in effect prior to the effectiveness of the amendments to the minimum net capital requirements, an introducing firm was required to maintain only \$5,000 in net capital.⁶ Previously, an introducing firm maintaining only \$5,000 in net capital was able to handle funds or securities in a variety of ways. In many cases, customers give funds or securities directly to the introducing firm, which is obligated to forward them to the clearing firm. In other cases, customers send property directly to the clearing firm.

Under the amendments being adopted by the Commission, introducing firms will be required to maintain either \$50,000 or \$5,000 in net capital, depending on whether the firm receives its customers' securities. Under the amended rule, the \$50,000 minimum is applicable to introducing firms even if the firm receives securities or checks made payable to the clearing firm or other responsible parties (e.g., an escrow agent). However, in order to be classified, for the purposes of the Commission's financial responsibility rules, as a firm that introduces accounts on a fully disclosed basis, an introducing firm must follow certain procedures.⁷ In order to operate under

⁶ An introducing broker-dealer is one that has a contractual arrangement with another firm, known as the carrying or clearing firm, under which the carrying firm agrees to perform certain services for the introducing firm. Usually, the introducing firm submits its customer accounts and customer orders to the carrying firm that executes the orders and carries the account. The carrying firm's duties include the proper disposition of customer money and securities after trade date, the holding of customer securities and funds, and the recordkeeping associated with carrying customer accounts.

A fully disclosed introducing arrangement should be distinguished from an omnibus clearing arrangement where the clearing firm maintains one account for all the customer transactions of the introducing firm. In an omnibus relationship, the clearing firm does not know the identity of the customers of the introducing firm. In a fully-disclosed clearing arrangement, the clearing firm knows the names, addresses, positions and other relevant data as to each customer. For the purposes of the net capital rule, broker-dealers that introduce accounts on an omnibus basis are considered clearing firms.

⁷ To be considered a fully disclosed introducing firm, the broker-dealer must have in place a clearing agreement that states that, for the purposes of SIPA and the Commission's financial responsibility rules, customers are customers of the clearing, and not the introducing, firm. Furthermore, the clearing firm must issue account statements directly to customers. Such statements must disclose the nature of the relationship between the entities and contain the name and telephone number of a responsible individual at the clearing firm whom a

customer can contact with inquiries regarding the customer's account. Finally, the account statement must disclose that customer funds or securities are located at the clearing, and not the introducing, firm. Absent such an arrangement, the introducing firm would be required to comply with greater minimum net capital requirements.

Notwithstanding this prohibition, the Commission believes that the \$5,000 requirement provides an inadequate standard for customer safety, as the procedures involving the disposition of customer funds or securities by inadequately capitalized introducing firms is a primary concern of both the Commission and SIPC. The NASD, the primary regulator for most introducing firms, shared this concern, and suggested in its comment letter to the Commission's original proposal, that the Commission establish two categories of introducing firm minimum requirements: A \$50,000 requirement for firms that receive customer securities; and a \$25,000 for those that do not. The Commission preliminarily believes the NASD's recommendation is valid, is proposing these amendments accordingly.

(ii) Need for Increases

The Commission believes it is appropriate to increase the minimum net capital requirement for introducing firms to \$25,000 for numerous reasons. Customers of an introducing firm, for example, can be harmed in several ways. First, even when introducing firms are prohibited from receiving customer funds and securities, customers can be exposed to loss. Although these introducing firms would not be permitted to receive customer property (other than checks made payable to appropriate third parties) under the amended rule, they are nevertheless able to obtain access to customer funds and securities.

Introducing firms frequently place customer orders with clearing firms and are therefore able to direct movements of customer funds and securities when those orders are placed. In this regard, customers are usually unable to distinguish from a broker-dealer that is allowed to receive funds and securities and one that is not. In many cases, the customer's sole contact with the securities industry is the registered representative at the introducing firm. Retail investors often place heavy reliance on the registered representative for investment advice and as such, trust their representatives.

customer can contact with inquiries regarding the customer's account. Finally, the account statement must disclose that customer funds or securities are located at the clearing, and not the introducing, firm. Absent such an arrangement, the introducing firm would be required to comply with greater minimum net capital requirements.

A second element of concern for the customers of introducing firms involves the customers' relationship with the clearing firm. Investors can be stranded if the introducing firm fails or closes temporarily due to a capital violation. Generally, the clearing firm will not accept orders directly from the customers because the clearing firm will consider the customers as those of the introducing firm. As a result, customers may be unable to liquidate their securities positions or open new positions until their accounts are transferred to another broker-dealer.

Although higher minimums will not eliminate the risk of this occurring, greater minimum net capital requirements will increase the chances that a failed introducing firm can quickly find a purchaser for its assets and therefore avoid a liquidation.

A final risk to customers exists in cases of fraud or theft. Because the introducing firm can control the disposition of the customer's property at the clearing firm, it can convert those assets to its own benefit. Recently, the Commission considered the case of the principal of an introducing broker-dealer that directed wire transfers of customer funds from accounts at a clearing firm to his account without customer authorization. The total amount of misappropriation exceeded \$1.1 million.

(iii) Industry Impact

The Commission is aware of the potential impact on the industry increases to minimum capital requirements can have. Indeed, in response to the Commission's first proposal, many commentators objected that the increases would eliminate existing firms and prevent broker-dealers from entering the industry.⁸ To address these concerns, the Division of Market Regulation (the "Division") analyzed financial data pertaining to introducing firms supplied by the NASD staff ("NASD Data"). To assess the cost of the proposed rules, the Division examined the capitalization of the industry. The Division also estimated

the approximate costs of raising the additional capital. While a precise estimate of the costs is difficult, if not impossible to predict, estimates based on the relative cost of capital demonstrate that the proposed amendments will not be unduly burdensome for introducing firms.⁹

The NASD Data does not distinguish between introducing brokers that receive funds and securities and those that do not. Therefore, the Division assumed that all NASD introducing firms elected to operate under the proposed \$25,000 standard instead of the \$50,000 level that will ultimately be required. This analysis reveals, as of the end of 1991, 560 introducing brokers (out of a total of 2,301 NASD member introducing firms) would need a total of \$6.2 million to comply with the proposed \$25,000 standard, or an average of \$11,114 for each firm. Based on an eight percent spread of cost of capital, the new standard would cost each broker an average of approximately \$890 per year. The Commission believes this is a slight insurance premium in light of the benefits that would be derived from the increase.

Moreover, to assess the impact of the proposal on the industry, introducing firm revenue data was examined. Out of a total \$5 billion in annual revenues generated by NASD member introducing firms in 1991, only \$119 million is accounted for by firms with less than \$25,000 in net capital. In other words, assuming all NASD introducing firms would fall under the \$25,000 standard, the proposed amendments would only affect the 560 firms that account for 2.4 percent of the total introducing firm revenues. In light of this data, and the regulatory concerns described above, the Commission believes an increase to \$25,000 is warranted and realistic. The Commission requests comment on the proposed increase, including comment on whether any additional safeguards or increases would be appropriate.

B. Over-the-Counter Market Makers

Under the net capital rule, a market maker's minimum requirement is the greater of its base minimum requirement or the amount determined on a per security basis. The net capital rule distinguishes between securities priced \$5 and above, and requires net capital of \$2,500 for those securities priced over \$5. Under the amendments adopted by the Commission, the per security requirement for securities priced at \$5 or less was increased from \$500 to

\$1,000. No change was made to the requirement for those priced above \$5.¹⁰

Notwithstanding these amendments, the Commission is concerned that the per security requirements for market makers are still too low. Thus, the Commission believes an additional proposal that will standardize the additional market maker capital requirement at \$2,500 per security, regardless of the price of the security, is necessary.

The proposal to standardize the per security market maker capital requirement at \$2,500 would eliminate a distinction that the Commission no longer believes is valid. When a broker-dealer holds itself out as making a market in a particular security, it should maintain sufficient capital to stand behind that commitment. That commitment is no less important in the market for securities priced at less than \$5. In fact, market makers that maintain the minimum amount of net capital required by the Commission are frequently unable to assume even the smallest number of positions in the stocks in which they make markets.

The Commission believes that these market makers can pose a threat to overall market liquidity. When a thinly capitalized market maker's capital falls below its minimum net capital requirement, the firm is compelled to withdraw as a market maker in some of its market making securities. This has been a problem particularly in the marketplace for securities priced under \$5 per share. This segment of the marketplace has been beset with broker-dealer failures, many of which have involved the failure of market making firms leading to the virtual elimination of a public market for many securities. The Commission believes that requiring a greater cushion of net capital for lower priced securities will reduce the frequency of these occurrences by insuring that market makers have the wherewithal to take meaningful positions in the securities in which they make markets.

Moreover, the Commission's experience is that the price per share of a security does not provide a useful indicia of the risk inherent in positions in that security. Far from discouraging market making activity in lower priced securities, the Commission believes that the proposed amendment will benefit the market for securities priced less than \$5 by adding depth and liquidity. Therefore, the Commission is proposing for comment an amendment that would require \$2,500 for all securities in which

⁸ As an alternative, a number of firms suggested that the Commission could accomplish its regulatory goals more fairly by drafting a net capital rule that would call for incremental increases for different types of business activity. For example, if a firm transacted a margin business, its minimum net capital requirement would increase by a pre-established factor. However, this approach would require the net capital rule to make dozens of distinctions that would further complicate the regulatory process. It is important for the net capital rule to be based on readily identifiable minimum classification requirements. Therefore this suggestion does not provide a workable alternative to the base requirement approach currently in place.

⁹ For a more complete discussion of the cost of capital, see Section II(c)(iii) of the Commission's adopting release.

¹⁰ The overall ceiling for market maker net capital was also raised from \$100,000 to \$1,000,000.

a firm makes a market, regardless of price.

C. Mutual Fund Broker-Dealers and All Other Broker-Dealers

The amendments to Rule 15c3-1 contained in the adopting release raise the net capital requirement for broker-dealers that limit their activities to transactions in shares of registered investment companies and receive, but promptly transmit funds and securities, to \$25,000. Mutual fund firms that do not receive customer funds or securities were permitted to remain in a \$5,000 category. The Commission believes that an additional increase (to \$10,000) for mutual fund broker-dealers that operate on a subscription way basis is necessary.

The Commission preliminarily believes that a minimum net capital requirement of only \$5,000 is too low for a registered broker-dealer that conducts a business with the investing public. The protections afforded customers and creditors of a firm with such minimal capital is negligible. Furthermore, the Commission believes the increase is justified given the pace of inflation since the time this level was adopted.

The Commission therefore is proposing for comment an amendment to paragraph (a)(2)(vi) of the net capital rule that would raise the minimum requirement for all categories of broker-dealers that do not receive customer funds or securities (including mutual fund firms that operate other than on a wire order basis) to \$10,000. The Commission wishes to emphasize that any receipt of funds or securities by firms operating under this category (except by customer error) will cause its minimum net capital requirement to increase from \$10,000 to \$25,000. It will become incumbent on these firms, therefore, to develop procedures to prevent their customers from transmitting funds or securities to the firm.

The proposed \$10,000 minimum level will also apply to all other broker-dealers that do not fall into the introducing, mutual fund, or some other category. The Commission believes that this residual category of broker-dealers pose reduced risks to customers and should have reduced net capital requirements. This proposed increase will therefore affect all firms that do not fit into any of the categories specified in the net capital rule.

This category includes broker-dealers that do not take customer orders, hold customer funds or securities, or execute customer trades, yet are required to register as broker-dealers with the

Commission because of the nature of their business activities. Firms that fall into this category include enterprises that identify and locate potential merger or acquisition opportunities on behalf of a third party and earn a percentage based fee. For this residual category of broker-dealer, the Commission also is proposing a minimum net capital requirement of \$10,000. The prohibition against receipt of customer funds or securities will apply to these firms as well. Finally, other firms, such as floor brokers, which currently may avail themselves of the \$5,000 minimum net capital category, also will fall into the proposed \$10,000 category.

As with introducing firms, the Division analyzed industry capitalization data to assess the impact of the proposed increased requirements. For mutual fund firms, the NASD Data does not, again, distinguish between firms that receive customer property and those that do not. Assuming all 409 NASD firms specializing in mutual fund activities in 1991 elected to operate under the \$10,000 standard, 118 would require additional capital to do so. These firms would need \$481,993, or an average of \$4,085 per firm to comply with the proposed increase. Assuming an 8 percent cost of capital, the proposed amendment would cost those firms, on average, \$327 per year to obtain the funds necessary for compliance. Finally, during 1991, NASD mutual fund firms collected revenues of \$1.308 billion. Of that amount, only \$6 million, or .46 percent was attributable to firms that maintained net capital below the proposed requirements.

In the residual category of firms that would be affected by the proposal, the largest grouping are those firms that specialize in best efforts underwritings. Of the 989 NASD member firms that conduct this activity, 358 would need a total of \$946,000, or an average of \$2,640 per firm, to comply with a \$10,000 minimum requirement. Based on an 8 percent cost of capital, the proposed amendments would cost those firms only approximately \$210 per year to comply. Finally, during 1991, this category of firms produced revenues of \$497 million. Of that amount, \$20 million, or only 4 percent, was attributable to firms that did not maintain \$10,000 in net capital.

IV. Phase-In Schedule

Because the new minimum capital standards will require some broker-dealers to acquire additional capital, the Commission proposes that the increases be staggered over a period of one year, beginning six months from the effective

date. The Commission notes that the first proposing release contained a four year phase-in provision. However, the Commission believes eighteen months is an acceptable time frame to allow firms to acquire additional capital. The timing of the proposed increases is summarized below:

1. Introducing Firms That Do Not Receive Funds or Securities

- a. Current rule: \$5,000
- b. By 6/30/93: \$12,000
- c. By 12/31/93: \$19,000
- d. By 6/30/94: \$25,000

2. All Other Firms

- a. Current rule: \$5,000
- b. By 6/30/93: \$6,500
- c. By 12/31/93: \$8,500
- d. By 6/30/94: \$10,000

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("Analysis") in accordance with 5 U.S.C. 630 regarding the proposed amendments. The Analysis notes that the objective of the proposed amendments is to further the purposes of the various financial responsibility and customer protection rules that provide safeguards with respect to the financial responsibility and related practices of brokers and dealers. In sum, the Analysis states that the proposed amendments would subject broker-dealers to higher capital requirements. A copy of the Analysis may be obtained by contacting Roger G. Coffin, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, (202) 272-7375.

VI. Statutory Analysis

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 15(c)(3), 17 and 23 thereof, 15 U.S.C. 78o(c)(3), 78q and 78w, the Commission proposes to amend 240.15c3-1, of title 17 of the Code of Federal Regulations in the manner set forth below.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of the Proposed Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 is amended by adding the following citation:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 7811(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, and 80b-11, unless otherwise noted.

2. Paragraphs (a)(2)(iv), (vi) and (a)(4) to § 240.15c3-1 are revised to read as follows:

§ 240.15c3-1 Net capital requirements for brokers and dealers.

(a)(2) * * *

Brokers or Dealers That Introduce Customer Accounts

(iv)(A) Brokers or Dealers That Receive Securities. A broker or dealer shall maintain net capital of not less than \$50,000 if it introduces on a fully disclosed basis transactions and accounts of customers to another registered broker or dealer but does not receive, directly or indirectly, funds from or for, or owe funds to, customers, and does not carry the accounts of or for customers. A broker or dealer operating pursuant to this paragraph (a)(2)(iv)(A) may receive, but shall not hold, customer or other broker or dealer securities. A broker or dealer operating under this paragraph (a)(2)(iv) may participate in a firm commitment underwriting without being deemed to be a dealer for the purposes of paragraph (a)(2)(iii) of this section but may not enter into a commitment for the purchase of shares related to that underwriting.

(B) Brokers or Dealers That Do Not Receive Securities. A broker or dealer shall maintain net capital of not less than \$25,000 if it introduces, on a fully disclosed basis, transactions and accounts of customers to another registered broker or dealer but does not receive, directly or indirectly, funds or securities from or for, or owe funds or securities to, customers, and does not carry the accounts of or for customers. A broker dealer operating under this paragraph may engage in the activities set forth in paragraph (a)(2)(v) of this section.

(C) A broker or dealer operating under this paragraph may engage in the following dealer activities without being subject to the requirements of paragraph (a)(2)(iii) of this section:

(1) In the case of a buy order, prior to executing such customer's order, it purchases as principal the same number of shares or purchases shares to accumulate the number of shares necessary to complete the order, which shall be cleared through another registered broker or dealer; or

(2) In the case of a sell order, prior to executing such customer's order, it sells

as principal the same number of shares or a portion thereof, which shall be cleared through another registered broker or dealer.

* * *

Other Brokers or Dealers

(vi) A broker or dealer that does not receive, directly or indirectly, or hold, securities for, or owe funds or securities to, customers and does not carry accounts of, or for, customers and does not engage in any of the activities described in paragraphs (a)(2) (i) through (v) of this section shall maintain net capital of not less than \$10,000.

* * *

Capital Requirements for Market Makers

(4) A broker or dealer engaged in activities as a market maker as defined in paragraph (c)(8) of this section shall maintain net capital in an amount not less than \$2,500 for each security in which it makes a market based on the average number of such markets made by such broker or dealer during the 30 days immediately preceding the computation date. Under no circumstances shall it have net capital less than that otherwise required by the other provisions of paragraph (a) of this section, or be required to maintain net capital of more than \$1,000,000 unless otherwise required by the other provisions of paragraph (a).

* * *

3. § 240.15c3-1e is amended by revising paragraph (f) and adding paragraph (g) to read as follows:

§ 240.15c3-1e Temporary Minimum Requirements (Appendix E to 17 CFR 240.15c3-1e).

Brokers or Dealers That Introduce Customer Accounts And Do Not Receive Securities

(f) A broker or dealer that falls within the provisions of Rule 15c3-1(a)(1)(iv)(B) and computes its required net capital under § 240.15c3-1(a)(1)(i) shall maintain net capital of not less than the greater of the amount computed under that paragraph or:

- (1) \$5,000 until June 30, 1993;
- (2) \$12,000 on July 1, 1993, until December 31, 1993;
- (3) \$19,000 on January 1, 1994, until June 30, 1994; and
- (4) \$25,000 on July 1, 1994.

Other Brokers or Dealers

(g) A broker or dealer that falls within the provisions of Rule 15c3-1(a)(2)(vi) and computes its required net capital under § 240.15c3-1(a)(1)(i) shall

maintain net capital of not less than the greater of the amount computed under that paragraph or:

- (1) \$5,000 until June 30, 1993;
- (2) \$6,500 on July 1, 1993, until December 31, 1993;
- (3) \$8,500 on January 1, 1994, until June 30, 1994; and
- (4) \$10,000 on July 1, 1994.

By the Commission.

Dated: November 24, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-29035 Filed 12-1-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93-4-000]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

November 25, 1992.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Request for comments and notice of intent to hold technical conference.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing a request for comments regarding the development of uniform standards for Electronic Bulletin Boards that interstate natural gas pipelines are required to maintain under part 284 of the Commission's regulations. The Commission is requesting comments and proposals for making these bulletin boards more interactive and user-friendly and otherwise enhancing the efficiency of the Commission's capacity release mechanism.

DATES: An original and six copies of comments on this Request for Comments must be filed with the Commission by January 11, 1993. Reply comments are due by January 29, 1993.

ADDRESSES: All filings should be addressed to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 and should refer to Docket No. RM93-4-000.

FOR FURTHER INFORMATION CONTACT: Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-1283.

George Dornbusch, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208-1181.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the *Federal Register*, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street NE., Washington, DC.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street NE., Washington, DC 20426.

I. Introduction

Order No. 636¹ requires pipelines to provide timely and equal access to all information necessary for buyers and sellers to arrange for capacity reallocations and requires this information to be provided on Electronic Bulletin Boards (EBBs). In Order No. 636-A, the Commission found that the issues of standardization of information content, format, protocols and response time are extremely important and would greatly enhance the efficiency of the capacity release program to the benefit of all users of a pipeline's system. The Commission also stated that the lack of uniform standards may hamper efficient movement of gas across pipeline systems and inhibit the development of market centers. Thus, the Commission strongly encouraged the industry to develop its own uniform standards and conventions for the use of EBBs.

To facilitate the process of developing industry-wide standards, the Commission stated that it would hold a technical conference in order to determine what progress has been made to date by the industry in developing interactive, user-friendly EBBs. This notice begins that inquiry. After reviewing the comments and proposals, the Commission will announce the date, time and location for the technical conference.

II. Request for Specific Comment

The Commission requests comments and/or concrete proposals that address the issues and questions raised below as well as other proposals to make EBBs more interactive and user friendly. The Commission is particularly interested in concrete proposals for EBBs and information transfer that some segments of the industry have developed or are in the process of developing. Proposals should describe their major elements in detail, and if appropriate, how any system would work, their accessibility to users, their user-friendliness and any costs to users or subscribers.

Issues Concerning Standards for Electronic Transfer of Capacity Release Information

• Information Available to Shippers and Potential Shippers

What information needs to be available on EBBs to achieve efficient operation of the Commission's capacity release program? Can any of this information be used to fulfill existing FERC reporting requirements? What role, if any, should the Commission have in the establishment of standards for information available to shippers and potential shippers?

• Structure of Capacity Release Information

What standard record formats and identification codes will facilitate the use of computers to automate the retrieval and processing of information? Are common data formats for such information as capacity available at all receipt points, on mainlines, laterals and delivery points needed? In addition, are standard codes, such as identifiers for receipt and delivery points needed? What role, if any, should the Commission have in the establishment of the structure of capacity release information?

• Methods of Transferring Capacity Release Information

What standard or uniform communications protocols, hardware and software requirements will reduce the cost of and facilitate accessing and

processing information (including uploading and downloading) from multiple pipelines? What role, if any, should the Commission have in the establishment of standardized hardware and software requirements? Should the Commission set minimum standards for response times?

• Display of Information on Electronic Bulletin Boards

Should user-friendly menu structures and displays be standardized? If so, how and by whom? If not, how can the Commission ensure that users can locate information on EBBs efficiently?

• The Effect of Joint Venture EBBs on Order No. 636 Electronic Bulletin Boards

What role can be played by pipeline joint ventures to operate EBBs? Would the need for some standards be reduced by joint venture EBBs?

• The Role of Third Party Networks in the Transmission of Order No. 636 Information.

What role can third party networks play in the efficient transmission of information about available transportation capacity on pipelines? What standards and protocols are necessary for networks to perform this role?

• The Role of Electronic Data Interchange (EDI) in the Transfer of Capacity Releasing Information²

Can any or all of the functions of Order No. 636 EBBs be replaced by transferring standardized information through Electronic Data Interchange?

Issues Concerning Coordination of Electronic Bulletin Boards Among Interconnecting Pipelines

• Capacity Spanning Upstream and Downstream Pipelines

Will a lack of coordination of the treatment of capacity aggregated by a releasor which spans upstream and downstream pipelines inhibit the development of market centers? Similarly, will a lack of coordination of the treatment of bids for capacity being aggregated by a replacement shipper which spans upstream and downstream pipelines inhibit the development of market centers? If coordination is needed, how can it be accomplished?

¹ Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636, 57 FR 13,267 (April 16, 1992), III FERC Stats. & Reg. Preambles ¶ 30, 939 (April 8, 1992); order on reh'g, Order No. 636-A, 57 FR 36,128 (August 12, 1992), III FERC Stats. & Reg. Preambles ¶ 30,950 (August 3, 1992).

² EDI is used in many industries to exchange routine business transactions in computer-processable form over networks. It requires standardization of the content and format of the transaction. To ensure standardization, EDI standards are formally approved by the American National Standards Institute.

What role, if any, should the Commission play in this regard?

- **Standard Time of Electronic Bulletin Board Operation**

Should the operating hours of EBBs be standardized? If so, what should be the hours of operation? What role, if any, should the Commission play in this regard?

Issues Concerning the Relationship of Capacity Release Information With Other Transactions

- **The Coordination of Capacity Releasing With the Buying and Selling of Natural Gas**

To what extent should Order 636 EBBs be coordinated with electronic markets for the buying and selling of natural gas? To what extent should the formats and codes of information common to both Order 636 and the buying and selling of natural gas be standardized?

- **The Relationship Between Order 636 Capacity Releasing Information and Information on Existing Pipeline Bulletin Boards.**

To what extent should the formats and codes of information common to both Order 636 and existing electronic nomination systems be standardized?

- **Interactivity**

What are the minimum standards for determining whether or not an EBB is interactive? Is an EBB sufficiently interactive when it permits a user to submit a bid for posted available capacity? Is something more necessary?

III. Comment Procedure

The Commission invites interested persons to submit comments, data, views and other information concerning the matters set out in this Request for Public Comment. An original and 6 copies of initial comments should be received by January 11, 1993, and of reply comments by January 29, 1993. The Commission encourages the filing of comments and reply comments on floppy computer disks, preferably 3½ inch disks in ASCII Text format, to assist in consolidation and efficient review of the comments. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 and should refer to Docket No. RM93-4-000.

By direction of the Commission.

Lois D. Cashell,
Secretary.

[FR Doc. 92-29221 Filed 12-1-92; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-36-92]

RIN 1545-AR05

Arbitrage Restrictions on Tax-Exempt Bonds; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the arbitrage restrictions applicable to tax-exempt bonds issued by States and local governments. These regulations affect issuers of tax-exempt bonds and provide guidance for complying with the arbitrage restrictions.

DATES: The public hearing will be held on Tuesday, February 2, 1993, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Friday, January 15, 1993.

ADDRESSES: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [FI-36-92], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Brenda Butler of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-622-7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations that propose to amend the Income Tax Regulations (26 CFR part 1) by replacing the yield restriction and rebate regulations currently provided in §§ 1.103-13 through 1.103-15 and §§ 1.148-0 through 1.148-11 with coordinated, simplified regulations. These proposed regulations appear in the *Federal Register* for Friday, November 6, 1992 (57 FR 53046).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, January 15, 1993, an outline of the oral

comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,
Federal Register Liaison Officer; Assistant Chief Counsel (Corporate).

[FR Doc. 92-28851 Filed 12-1-92; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[FI-31-92]

RIN 1545-AR04

Modifications of Debt Instruments; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document contains notice of a public hearing on proposed regulations relating to the treatment of modifications of debt instruments as realization events under section 1001 of the Internal Revenue Code.

DATES: The public hearing will be held on Wednesday, February 17, 1993, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Wednesday, January 27, 1993.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, seventh floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (FI-31-92) room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit,

Assistant Chief Counsel (Corporate), 202-622-8452 or (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 1001 of the Internal Revenue Code. The proposed regulations appear elsewhere in this issue of the *Federal Register*.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Wednesday, January 27, 1993, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-28856 Filed 12-1-92; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[FI-31-92]

RIN 1545-AR04

Modifications of Debt Instruments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the treatment of modifications of debt instruments as realization events under section 1001 of the Internal Revenue Code. The proposed regulations clarify when a modification of a debt instrument will be deemed to be an exchange of properties that differ

materially either in kind or in extent within the meaning of § 1.1001-1(a) of the regulations. The proposed regulations provide guidance to holders and issuers of debt instruments that modify the terms of their instruments.

DATES: Written comments and requests to appear (with outlines of oral comments) at a public hearing scheduled for February 17, 1993, at 10 a.m. must be received by January 27, 1993. See notice of hearing published elsewhere in this issue of the *Federal Register*.

ADDRESSES: Send comments, requests to appear, and outlines of oral comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (FI-31-92), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT:

Concerning the hearing, Carol Savage of the Regulations unit, at 202-622-7190.

Concerning the regulations, Thomas J. Kelly, of the Office of Assistant Chief Counsel, Financial Institutions and Products, at 202-622-3940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document sets forth proposed income tax regulations (26 CFR part 1) under section 1001 of the Internal Revenue Code (Code).

Explanation of Provisions

Section 1.1001-1(a) of the regulations provides that gain or loss is realized on the sale of property or on the "exchange of property for other property differing materially either in kind or in extent." This rule has applied not only to actual exchanges of properties between owners, but also to deemed exchanges arising from the modifications of the terms of debt instruments.

With the exception of the mortgage swap transaction discussed below, § 1.1001-1(a) of the regulations has resulted in relatively little controversy in the case of actual exchanges between holders of debt instruments. Taxpayers and the Service generally have agreed that, absent unusual facts, an actual exchange gives rise to gain or loss. Uncertainty exists, however, with respect to whether particular types of modifications result in deemed exchanges of debt instruments. This uncertainty has resulted in a great deal of controversy between taxpayers and the Service and has produced a substantial body of administrative and judicial precedents.

The decision of the Supreme Court in *Cottage Savings Ass'n v. Commissioner*, 111 S. Ct. 1503 (1991), has generated

additional controversy regarding the treatment of modifications. In *Cottage*, a savings and loan association engaged in a series of purchases and sales of mortgage participation interests. In each transaction, the taxpayer sold mortgage participation interests to another financial institution and purchased substantially identical mortgage participation interests from the other institution. Although cast as sales and purchases, the holders exchanged mortgage participation interests. The taxpayer treated the exchanges as realization events under section 1001 of the Code and claimed losses. The Service sought to disallow the losses on the ground that the exchanged properties were economically equivalent and thus did not differ materially within the meaning of § 1.1001-1(a) of the regulations.

The Court held that the taxpayer had realized a loss. After concluding that § 1.1001-1 of the regulations is a reasonable interpretation of section 1001(a) of the Code, the Court determined that, because the participation interests exchanged by the taxpayer were derived from loans made to different obligors and secured by different homes, the exchanged interests embodied legally distinct entitlements and therefore were materially different. Thus, the transaction resulted in a sale or disposition under section 1001 of the Code.

Cottage did not involve the modification of an instrument, but an actual exchange between holders. Questions have arisen, however, concerning the Court's interpretation of the material difference standard and its possible application to modifications of debt instruments by issuers and holders. It has been suggested that the parties to a debt instrument should be able to adjust certain terms of their instrument without the modification rising to the level of a deemed exchange.

In response to the issues raised by the *Cottage* decision, and in an effort to provide certainty, the Service proposes to expand the regulations under section 1001 of the Code to deal explicitly with the modification of debt instruments. The proposed regulations define when a modification will be deemed to be an exchange of the original instrument for a modified instrument that differs materially either in kind or in extent.

Even if a modification results in a deemed exchange under the proposed regulations, the holder and issuer may not realize gain or loss. For example, the refinancing of a residential mortgage with the same lender or the modification of a small business loan typically will not have tax consequences

for either the issuers or the holders. The realization by the issuer of income from discharge of indebtedness under section 108(e)(11) of the Code will depend on whether the adjusted issue price of the original instrument is less than or greater than the issue price of the new instrument, which is determined under sections 1273 and 1274 of the Code. The realization of gain or loss by the holder generally will depend on whether the issue price of the new instrument is less than or greater than the holder's basis in the original instrument. In addition, even if a gain or loss is realized, certain nonrecognition provisions of the Code may apply.

The publication of these proposed regulations is designed to elicit comments with respect to the desirability of providing rules for the modification of debt instruments, as well as comments with respect to what those rules might be. Final regulations will apply only to modifications made on or after the date that is 30 days after the publication of final regulations in the *Federal Register*. When the final regulations are published, the Service will declare obsolete existing revenue rulings that no longer represent the Service's position on when a modification of a debt instrument results in a deemed exchange.

The Service is examining the extent to which a deemed exchange of debt instruments under the proposed regulations should control the tax treatment of particular transactions under other Code provisions. Although section 1001 of the Code applies generally to tax-exempt obligations, Notice 88-130, 1988-2 C.B. 543, governs the treatment of certain obligations for purposes of sections 103 and 140 through 150 of the Code. Likewise, the determination of whether there is a sale or disposition under section 1001 does not conclusively determine that there has been a disposition of an installment obligation under section 453 of the Code. The proposed regulations do not change this tax treatment. The Service invites comments on whether the proposed regulations should control the tax treatment of other types of transactions under other specific provisions of the Code.

In addition, the Service invites comments on whether the scope of the proposed regulations should be expanded to include modifications of financial instruments such as forwards, options, and notional principal contracts.

The proposed regulations are found in new § 1.1001-3. Paragraph (a) provides the general rule that, for purposes of

§ 1.1001-1(a) of the regulations, a significant modification of a debt instrument under these regulations is treated as an exchange of the original instrument for a modified instrument that differs materially either in kind or extent. Modifications that are not significant modifications are not exchanges.

Paragraph (b) provides that these regulations apply to all modifications of debt instruments regardless of the form of the modification. The regulations do not apply to exchanges of instruments between holders unless such an exchange effects an indirect modification.

Paragraph (c) defines the term "modification" and paragraph (e) defines the term "significant modification." In applying the regulations, the first step is to determine whether the original instrument has been modified. Only if there has been a modification under paragraph (c) is there a need to consider the rules of paragraph (e) to determine whether the modification is significant.

The general rule of paragraph (c) is that an alteration of a legal right or obligation of the holder or the issuer is a modification. Alterations that occur by operation of the original terms of an instrument, however, generally are not modifications. An alteration that occurs through the exercise or waiver of a right under an instrument is by operation of the instrument only if the exercise or waiver is unilateral. Another exception to the general rule provides that a temporary failure of the issuer to perform its obligations under the instrument, including a delay in payment, is not a modification. The Service is considering to what extent alterations that occur as a result of a change in a statute or governmental regulation should not be viewed as modifications, whether or not the possibility of such change was addressed in the original instrument.

The rules of paragraph (e) set standards for determining whether the more common types of modifications are significant. In some cases, the rules provide a bright-line test. For example, in determining whether a change in yield is significant, paragraph (e)(1) prescribes a $\frac{1}{4}$ of one percent rule. In other cases, the rules are more general. The Service invites comments on all the specific rules of paragraph (e). Suggestions for additional bright-line tests or for rules governing other types of modifications are welcome.

In particular, the Service invites comments with respect to the rules concerning a change in obligor on an instrument. The proposed regulations

state that a change in obligor generally is a significant modification (except to the extent that no modification occurs because the change is permitted by the terms of the instrument). Exceptions are provided for a change in obligor resulting from a section 381(a) transaction in which the acquiring corporation becomes the obligor. The Service is considering whether additional exceptions should be provided for a change in obligor resulting from the assumption of a debt instrument in connection with the sale of property securing the instrument or in connection with the sale of substantially all of the original obligor's assets.

Comments are also invited with respect to the rules of paragraph (e) that provide special treatment for nonrecourse debt. These rules relate to a change in obligor, the addition or material alteration of a guarantee or other form of credit enhancement, the substitution of collateral, and a change in the nature of the instrument from nonrecourse debt to recourse and vice versa. With respect to changes in the recourse nature of the instrument, comments are invited with respect to whether an exception should be provided based upon the adequacy of the collateral securing the note.

Paragraph (f) prescribes the rules for application of these standards.

Paragraph (f)(1) provides that any modification of an instrument must be tested against each of the rules of paragraph (e). If a modification is significant under any rule of paragraph (e), it is a significant modification and a deemed exchange.

If more than one term is modified, each modification is tested against each rule of paragraph (e) and, if no one modification is a significant modification, there is no significant modification of the instrument. Multiple changes to a single term, however, are treated as a single modification and tested for significance under paragraph (e).

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted

to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety.

A public hearing on these proposed regulations will be held on February 17, 1993, at 10 a.m. See the notice of public hearing published elsewhere in this issue of the *Federal Register*.

Drafting Information

The principal author of these regulations is Thomas J. Kelly of the Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.1001 through 1.1002-1

Income taxes.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1001-3 is added to read as follows:

§ 1.1001-3 Modifications of debt instruments.

(a) *General rule.* For purposes of § 1.1001-1(a), a significant modification of a debt instrument, within the meaning of this section, is deemed to result in an exchange of the original instrument for a modified instrument that differs materially either in kind or in extent. A modification that is not a significant modification is not an exchange for purposes of § 1.1001-1(a). Paragraphs (c) and (d) of this section define the term "modification" and contain examples illustrating the application of the rule. Paragraphs (e) and (f) of this section provide rules for determining when a modification is significant. Paragraph (g) of this section contains examples illustrating the

application of the rules in paragraphs (e) and (f) of this section.

(b) *Scope.* This section applies to all modifications to debt instruments, regardless of the form of the modification. Thus, it applies to an actual exchange between a holder and an issuer of a new instrument for an existing instrument. It also applies whether a modification is effected directly between a holder and an issuer, or indirectly through one or more transactions with third parties. This section, however, does not apply to exchanges of instruments between holders other than those that effect indirect modifications.

(c) *Modification defined.*—(1) *In general.* Except as provided in paragraph (c)(2) of this section, "modification" means any alteration in any legal right or obligation (including the addition or deletion of a right or obligation) of the issuer or a holder of a debt instrument, whether the alteration is evidenced by amendment of the instrument, conduct of the parties, or otherwise.

(2) *Exceptions.*—(i) *Alterations occurring by operation of the original terms of an instrument.* Except as provided in paragraph (c)(3) of this section, an alteration of a legal right or obligation is not a modification if it occurs by operation of the original terms of the instrument. An alteration that occurs through one party's exercise or waiver of a right under the instrument is by operation of the original terms provided that the exercise or waiver is unilateral.

(A) *Exercise that is not unilateral.* The exercise of a right is not unilateral—

(1) If it creates a right in the other party to alter or terminate the instrument, or to put the instrument to a third party;

(2) If it requires consent of the other party, unless that consent may not be unreasonably withheld; or

(3) If it requires consideration, unless the amount of consideration is fixed on the issue date.

(B) *Waiver that is not unilateral.* The waiver of a right is not unilateral if it represents a settlement of terms among the parties. Thus, for example, a workout of a debt instrument is a modification even where the workout results only in a reduction in the interest rate or in the stated principal of the instrument. Whether a waiver represents a settlement of terms among the parties depends on the facts and circumstances. Generally, a waiver represents a settlement of terms among the parties whenever the party making the waiver receives a benefit (other than the mere enhancement of goodwill or

reputation) from the other party to the instrument.

(ii) *Inability to perform.* A temporary failure of the issuer to perform its obligations under an instrument, including a delay in payment, is not a modification. An agreement by the holder to temporarily stay collection or waive an acceleration clause or similar default right is not a modification.

(3) *Modified instrument is not debt.* An alteration of the terms of a debt instrument, even if it occurs by operation of original terms of the instrument, is a modification if the alteration results in an instrument or property right that is not debt for federal income tax purposes. The conversion of a debt instrument into stock of the issuer, however, is not a modification if it is pursuant to terms of the instrument giving the holder the conversion right.

(d) *Examples.* The provisions of paragraph (c) are illustrated by the following examples.

Example 1. Reset bond. A bond provides for the interest rate to be reset each 49 days by a remarketing agent based on an objective standard. The legal right of the holder is to receive interest at the rate that is determined by the remarketing agent. The reset of the interest rate is not an alteration of any legal right or obligation. Thus, the reset is not a modification.

Example 2. Obligation to maintain collateral. The original terms of a bond provide that the bond must be secured by a certain type of collateral having a specified value. The terms also require the issuer to substitute collateral if the value of the original collateral decreases. The substitution of collateral pursuant to the terms of the bond is not a modification.

Example 3. Alteration contingent on act of a party. The original terms of a bond provide that the interest rate is 9 percent. The terms also provide that, if the issuer registers the bond, the interest rate will decrease to 8 percent. The issuer registers the bond. The resulting decrease in the interest rate occurs pursuant to the terms of the bond and is not a modification.

Example 4. Right to alter term contingent on improved credit rating. The original terms of a bond provide for an interest rate of 9 percent. The terms also provide that, if the credit rating of the issuer improves to a certain rating, the issuer has a right to change the interest rate to 8 percent. If the issuer exercises its right to decrease the rate of interest pursuant to this term, the change in interest rate occurs through the unilateral exercise of a right. Thus, the change is by operation of the original terms of the instrument and is not a modification.

Example 5. Conversion of adjustable to fixed rate mortgage. The original terms of a mortgage provide for a variable interest rate, reset annually based on an objective index. The terms provide that the mortgagor may change to a fixed rate of interest upon the payment of a fixed administrative fee. The exercise of the right to change the mortgage

from an adjustable rate to a fixed rate instrument is unilateral even though the fee is required to be paid on exercise, because the amount of the fee was fixed on the issue date. Thus, the alteration occurs by operation of the original terms of the instrument and is not a modification. If the amount of the conversion fee varied depending on the market interest rates, however, the conversion would be a modification.

Example 6. Change in obligor permitted by assumption of mortgage upon sale. The original terms of a residential mortgage provide that, upon the sale of the residence, the buyer may assume the mortgage. Under the terms of the mortgage, the mortgagor must obtain the consent of the holder to the assumption but the holder cannot unreasonably withhold its consent. This assumption occurs through the unilateral exercise of a right and is pursuant to the terms of the instrument. Thus, the assumption is not a modification.

Example 7. Alteration requiring consent. Under the original terms of a bond, the issuer and holder may agree to extend the maturity of the bond. Any extension pursuant to this term requires the consent of the parties and does not occur by the unilateral exercise of a right. Thus, the extension is a modification.

Example 8. Exercise of a right that creates a counter right. Under the terms of a bond paying a variable rate of interest, the issuer has a one-time right to convert to a fixed rate of interest determined by a formula. If this right is exercised, however, the holder has the right to put the bond to the issuer. The issuer's exercise of the right to convert to a fixed rate of interest is not unilateral because it gives the holder the right to put the bond. Thus, the exercise of that right does not occur by operation of the original terms of the instrument and is a modification.

Example 9. Temporary waiver of acceleration clause. Under the original terms of a bond, if the issuer of a bond fails to make a scheduled payment of interest, the holder may demand the acceleration of the payment of the principal. Pursuant to negotiations between the parties, the holder formally waives its right to acceleration for 3 months to allow the issuer to arrange for a short-term loan from another creditor. Although the negotiated waiver is not unilateral under paragraph (c)(2)(i)(B) of this section, the waiver is temporary and, under paragraph (c)(2)(ii) of this section, is not a modification.

(e) Significant modifications. Whether the modification of a debt instrument is significant is determined under the rules of this paragraph (e). In the case of modifications of a type not described in paragraphs (e) (1) through (4) of this section, whether the modification is significant is determined based on the facts and circumstances. A ministerial change in the terms of an instrument, such as a change in the mechanics of making a payment, is not a significant modification.

(1) Change in yield. Whether a change in the annual yield on an instrument over its remaining life is a significant modification is determined under

paragraph (e)(1) (i), (ii), or (iii) of this section, whichever is applicable.

(i) Changes in current interest payments. In the case of an instrument that provides for current interest payments, if the only modification affecting the yield is a change in the annual rate at which current interest payments are computed, the change is a significant modification if the modified rate varies from the original rate by more than $\frac{1}{4}$ of one percent (25 basis points).

(ii) Other changes. In the case of a change not described in paragraph (e)(1) (i) or (iii) of this section, a modification that changes the annual yield on the instrument is a significant modification if the annual yield on the instrument after the modification, measured from the date the parties agree to the modification to its final maturity date, varies from the annual yield on the original, unmodified instrument for the same period by more than $\frac{1}{4}$ of one percent (25 basis points). To compute the annual yield after the modification for purposes of testing under this paragraph, the adjusted issue price of the instrument immediately before the modification is increased by any accrued but unpaid interest, and increased or decreased, respectively, to reflect any payments made to the issuer or to the holder as consideration for the modification. In computing the modified yield, in the case of a prepayment of a discount instrument, the adjusted issue price is also increased for any unaccrued discount included in the prepayment.

(iii) Variable rate instruments. In the case of a variable rate instrument, a change in the index, formula or other mechanism that is used to determine the interest rate for each period is a significant modification if the change can reasonably be expected to affect the annual yield on the instrument by more than $\frac{1}{4}$ of one percent (25 basis points).

(2) Changes in timing and/or amounts of payments—(i) Deferral of payments. A change in the timing and/or amounts of payments is a significant modification if it materially defers payments due under an instrument. In addition, any change that is designed to avoid the application of the rules for original issue discount (sections 1271 through 1275) is a significant modification.

(ii) Extension of final maturity. An extension of the final maturity date of an instrument is a significant modification if it exceeds the lesser of five years or 50 percent of the original term of the instrument. For this purpose, extensions of the final maturity

of an instrument for only *de minimis* payments are disregarded.

(iii) Partial prepayments. The prepayment of a portion of a debt instrument is not a significant modification. A significant modification occurs, however, if the terms of the remaining portion are altered in a way that would be a significant modification under this paragraph (e). A commercially reasonable prepayment penalty for a partial prepayment is not a change in the remaining portion of the instrument and is not consideration for a modification of the debt instrument that effects the yield determined under paragraph (e)(1)(ii) of this section.

(iv) Puts and calls. The addition or deletion of a term giving the issuer the right to call the instrument or the holder the right to put the instrument is a significant modification if the put or call right has significant value at the time of its addition or deletion. The alteration of an existing put or call right is a significant modification if the alteration significantly affects its value.

(3) Change in obligor or security—(i) Change in obligor. The substitution of a new obligor is a significant modification except in the case of—

(A) A change in obligor resulting from a transaction to which section 381(a) applies if the new obligor is the acquiring corporation within the meaning of that section; or

(B) A change in obligor on a nonrecourse note.

(ii) Addition of co-obligor. The addition of a co-obligor on a debt instrument is not a significant modification unless adding the co-obligor is intended to circumvent the rules regarding a change in obligor under paragraph (e)(3)(i) of this section.

(iii) Credit enhancement. The addition or material alteration of a guarantee or other form of credit enhancement on a nonrecourse instrument is a significant modification. The addition or material alteration of a guarantee or other form of credit enhancement on a recourse instrument is not a significant modification unless the guarantor or credit enhancement provider is, in substance, substituted as the obligor on the debt instrument and the change is intended to circumvent the rules regarding a change in obligor under paragraph (e)(3)(i) of this section.

(iv) Substitution of collateral. A change in the collateral securing a nonrecourse note generally is a significant modification if a substantial portion of the collateral is released or replaced with other property. A substitution of collateral is not a significant modification, however, if the collateral is fungible or otherwise of a

type where the particular units pledged as security are unimportant (e.g. government securities of a particular type and rating). Adjustments and improvements to the property securing a nonrecourse note do not result in a significant modification. A change in the collateral securing a recourse note is not a significant modification.

(v) *Subordination.* The subordination of a debt instrument to other debt of the issuer is not a significant modification.

(4) *Changes in the nature of the instrument—(i) Property that is not debt.* A modification is significant if it changes the instrument to an instrument or property that is not debt for Federal tax purposes.

(ii) *Changes in types of payments.* A modification is significant if it changes—

(A) A fixed rate instrument to a variable rate instrument or a contingent payment instrument;

(B) A variable rate instrument to a fixed rate instrument or a contingent payment instrument;

(C) A contingent payment instrument to a fixed rate instrument or a variable rate instrument, or

(D) The currency in which payment under the debt instrument is made.

(iii) *Conversion or exchange rights—(A) General rule.* The addition or deletion of a term giving the holder the right to convert into stock of the issuer or exchange the instrument for stock of another corporation is a significant modification if the conversion or exchange right has significant value at the time of its addition or deletion. The alteration of an existing conversion or exchange right is a significant modification if the alteration significantly affects its value or changes the corporation whose stock is to be received in the conversion or exchange.

(B) *Section 381(a) exception.* In a transaction to which section 381(a) applies, if an acquiring corporation (within the meaning of that section) becomes the obligor on a convertible instrument, the change of the conversion feature to make the instrument convertible into stock of that corporation is not a significant modification if the conversion ratio is adjusted to maintain the value of the conversion feature.

(C) *Anti-dilution exception.* A change in the conversion or exchange ratio to reflect a stock-dividend or a stock-split is not a significant modification.

(iv) *Change in the recourse nature of debt instrument.* A modification is significant if it changes—

(A) A recourse debt instrument to a nonrecourse debt instrument, or

(B) A nonrecourse debt instrument to a recourse debt instrument.

(f) *Rules of application.* The following rules govern the application of the rules of paragraph (e) of this section.

(1) *Testing a modification.* A modification of an instrument must be tested under each rule of paragraph (e) of this section. It is a significant modification if it is significant under any rule. A modification is tested at the time the parties agree to the modification even though the changes may not be immediately effective.

(2) *Modifications that are not significant.* The rules of paragraphs (e)(1) through (4) of this section identify certain changes to the terms of an instrument that are significant modifications and other changes that are not significant modifications. To the extent that a paragraph prescribes a degree of change that constitutes a significant modification, a change of the same type but of a lesser degree is not a significant modification. For example, because paragraph (e)(1)(ii) of this section specifies that a change in the annual yield on an instrument exceeding $\frac{1}{4}$ of one percent is a significant modification, a change not exceeding $\frac{1}{4}$ of one percent is not a significant modification.

(3) *Multiple changes—(i) Simultaneous changes.* Multiple changes to a debt instrument, none of which would be a significant modification under paragraph (e) of this section, do not collectively constitute a significant modification. Thus, for example, a combination of a change in yield that is not a significant modification under paragraph (e)(1) of this section, coupled with a substitution of collateral that is not a significant modification under paragraph (e)(3)(iv) of this section, is not a significant modification. Although each change is tested independently, in testing the change it is assumed that all other simultaneous changes have already occurred.

(ii) *Multiple changes over period of time.* Multiple changes to a debt instrument over any period of time constitute a significant modification if, had they been done as a single change, the change would have resulted in a significant modification under paragraph (e) of this section. Thus, for example, a series of changes in the maturity of an instrument is a significant modification if, combined as a single change, they result in a significant modification.

(g) *Examples.* The provisions of paragraphs (e) and (f) of this section are illustrated by the following examples.

Example 1. Change in yield, call waiver payment. A twenty year bond was issued in 1984 and is callable by the issuer in 1994. In 1994, interest rates have declined significantly. The holder pays the issuer to waive its call right. The significance of the modification is tested under both the change in yield rules in paragraph (e)(1)(ii) of this section and the put and call rules in paragraph (e)(2)(iv) of this section.

Example 2. Extension of maturity and change in yield. A zero coupon bond has an original maturity of ten years. At the end of the fifth year, the parties agree to extend the maturity for a period of two years. Even though the extension of maturity is not a significant modification under paragraph (e)(2)(ii) of this section, the modification also decreases the yield of the instrument. The change in yield must be tested under paragraph (e)(1)(ii) of this section.

Example 3. Change in yield resulting from reduction of principal. (i) A debt instrument has an original maturity of ten years and provides for the payment of \$100,000 at maturity with annual interest payments at the rate of 10 percent. At the end of the fifth year, and after the annual payment of interest, the issuer and holder agree to reduce the amount payable at maturity to \$80,000. The annual interest rate remains at 10% but is payable on the reduced principal.

(ii) In applying the change in yield rule of paragraph (e)(1)(ii) of this section, the yield of the instrument after the modification (measured from the date that the parties agree to the modification to its final maturity date) is computed using the adjusted issue price of \$100,000. With four annual payments of \$8,000, and a payment of \$88,000 at maturity, the yield on the instrument after the modification for purposes of determining if there has been a significant modification under paragraph (e)(1)(ii) of this section is 4.332%. Thus, the reduction in principal is a significant modification.

Example 4. Current payments to deferred payments. A twenty-year debt instrument matures on December 31, 2010, and provides for the payment of \$100,000 at maturity with annual interest payments at the rate of 10 percent. At the end of 1993, the issuer and holder agree to defer the interest payments at the end of years 1994, 1995, 1996 and 1997 to the end of 1998, with compounding. The yield of the modified instrument remains at 10 percent. This change, however, materially defers the payments due under the instrument and is a significant modification under paragraph (e)(2)(i) of this section.

(h) *Issuer/obligor.* For purposes of this section, the terms "issuer" and "obligor" are used interchangeably and mean the issuer of the debt instrument or a successor obligor. In the case of a debt instrument issued by a state or political subdivision, "issuer" and "obligor" mean the state or political subdivision that issued the debt

instrument and not the conduit borrower, if any.

Shirley D. Peterson,

Commissioner of Internal Revenue Service.

[FR Doc. 92-28857 Filed 12-1-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Permanent Regulatory Program; Ownership and Control

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; withdrawal of proposed rule.

SUMMARY: OSM is announcing the withdrawal of proposed rule changes submitted by the State of Indiana in connection with Program Amendment No. IN-013 to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 N. Pennsylvania Avenue, Indianapolis, IN 46204. Telephone (317) 226-6166.

SUPPLEMENTARY INFORMATION:

I. Background Information

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, *Federal Register* (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendment

By letter dated May 11, 1989, (Administrative Record No. IND-0644), OSM informed Indiana of changes to the Federal regulations concerning ownership and control which may necessitate changes in the Indiana program.

By letter dated May 11, 1992, (Administrative Record No. IND-1080),

the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program at 310 Indiana Administrative Code (IAC) 12-0.5, 12-3, and 12-6. The proposed amendment includes changes to the following Indiana rules:

Rule Number and Subject (Intended Action)

310 IAC 12-0.5-80.5 Definition of "owned or controlled." (New)

310 IAC 12-3-19 (Repeal)

310 IAC 12-3-19.1 Surface mining permit applications; identification interests. (Replace; New)

310 IAC 12-3-20 Surface mining permit applications; compliance information. (Amend)

310 IAC 12-3-111 (Repeal)

310 IAC 12-3-111.1 Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; review of permit applications. (New)

310 IAC 12-3-112 Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; permit approval or denial. (Amend)

310 IAC 12-3-119.5 Administrative and judicial review of decisions by the Director on permit applications; improvidently issued permits; general procedures. (New)

310 IAC 12-3-119.6 Administrative and judicial review of decisions by the Director on permit applications; judicial review; improvidently issued permits; rescission procedures. (New)

310 IAC 12-6-5 State enforcement; cessation orders. (Amend)

On July 14, 1992, OSM published a notice in the *Federal Register* (57 FR 31161) announcing receipt of Indiana's proposed amendment to the Indiana program and inviting public comment on its adequacy. The public comment period ended on August 13, 1992. The public hearing was not held as no one requested an opportunity testify.

By letter dated August 26, 1992, (Administrative Record No. IND-1137), OSM requested that Indiana correct or clarify certain issues pertaining to Indiana's proposed amendment.

By letter dated November 13, 1992, (Administrative Record No. IND-1167), Indiana withdrew its May 11, 1992, submission of the proposed ownership and control amendment.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 19, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92-29175 Filed 12-1-92; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-90-043]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Elizabeth River, Southern Branch, Chesapeake, VA

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is issuing a revised proposed rule for the operation of the Jordan drawbridge across the Atlantic Intracoastal Waterway, Southern Branch of the Elizabeth River, mile 2.8, in Chesapeake, Virginia. This change would allow commercial cargo vessels and tugs and tows passage through the bridge during rush hour provided a 2-hour advance notice is given to the Jordan Bridge Office. This revised proposed rule also includes a provision that allows public vessels of the United States, vessels in distress, commercial vessels carrying liquefied flammable gas or other harmful substances, and commercial or public vessels assisting in an emergency situation passage through the bridge at any time. This proposal is intended to provide for the safety of the public while providing regularly scheduled drawbridge openings.

DATES: Comments must be received on January 19, 1993.

ADDRESSES: Comments may be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, or may be delivered to room 507 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (804) 398-6222.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398-6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data,

views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD5-90-043) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Bridge Administrator at the address under ADDRESSES. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the *Federal Register*.

Drafting Information

The principal persons involved in drafting this document are Linda L. Gilliam, Project Manager, Bridge Section, and LT Monica L. Lombardi, Project Counsel, Legal Office.

Background and Purpose

The original proposal was published on July 27, 1990, in the *Federal Register* (55 FR 30723). It would have closed the Jordan Bridge to all vessels during morning and evening rush hours, Monday through Friday, except Federal holidays, from 6:30 a.m. to 7:30 a.m. and from 3:30 p.m. to 5 p.m. Interested persons were given until September 10, 1990, to submit comments. The Commander, Fifth Coast Guard District, also published the proposed rule as a public notice on August 2, 1990. The comment period for the public notice also ended September 10, 1990. Based on requests received, a public notice was issued on August 23, 1990, extending the comment period to October 10, 1990.

As a result of the proposed rule and the public notice, comments were received from the maritime community and the motoring public. The motorists were all in favor of the proposed restrictions during peak traffic hours since elimination of draw openings during these hours would help reduce traffic disruption, delays, congestion

and minor accidents. The commercial marine industry was opposed to restricting openings of the drawbridge to them based on economic impact concerns, safety and deep-draft vessel navigation requirements. The Coast Guard Marine Safety Office, Hampton Roads, commented in their memorandum dated October 9, 1990, the liquefied flammable gas carriers should be allowed passage through the Jordan Bridge any time with no restrictions due to the need for establishing safety zones and the risk and hazard involved in transporting a loaded liquefied flammable gas vessel.

As a result of these comments, a revised proposed rule was published in the *Federal Register* (56 FR 34046) on July 25, 1991, and the Commander, Fifth Coast Guard District, published the supplemental proposed rule as a public notice on July 31, 1991. The revised proposal included the original proposal with additional provisions which allowed commercial vessels with a draft of 22 feet or greater access through the bridge during morning and evening rush hours, provided they gave a 6-hour advance notice of their arrival, and liquefied flammable gas carriers access through the bridge any time with no restrictions. The decision to allow deep draft vessels access through the Jordan Bridge during peak traffic hours was based on these vessels requiring high tide to transmit upstream from the bridge to commercial marine terminals where the channel depths are reduced to as little as 27 feet. Due to the hazards involved in shipping liquefied flammable gas, it was decided to allow liquefied flammable gas vessels unrestricted access through the bridge any time of the day. The comment period for the public notice and the proposed rule ended September 9, 1991. At the request of the maritime industry, a supplement to the public notice was issued on September 5, 1991, extending the comment period to October 9, 1991, to allow them additional time to submit their comments.

Additional comments were received during the last comment period, and have been thoroughly considered by the Coast Guard. Specifically, comments from the motoring public remained the same; however, the maritime industry expressed further concern over the safety factor of transporting any harmful substance through this bridge and requested that the type of ships and harmful substances be expanded to include all flammable products. Also, they requested that the 6-hour advance notice requirement for other commercial vessels be relaxed to 2 hours and

include heavily laden cargo vessels, including tugs with tows.

As a result of the comments received from the maritime industry and meetings held with them, a second supplement to the proposal was published June 12, 1992, in the *Federal Register* (57 FR 25000). The second supplement to the proposal included heavily laden cargo vessels and tugs with tows passage through the bridge provided a 2-hour advance notice was given. A provision that the draw shall open on signal anytime for vessels in distress, public vessels of the United States, and vessels carrying liquefied flammable gas was included in the proposal.

The Commander, Fifth Coast Guard District, also published the proposal as a public notice on June 18, 1992. Interested persons were given until July 27, 1992, to submit comments. The comment period for the public notice also ended July 27, 1992. Based on a request from the Chesapeake Port Authority, the comment period was extended to September 25, 1992.

Additional comments were received during the last comment period, and have been thoroughly considered by the Coast Guard. Comments from the motoring public have remained the same; however, the maritime industry expressed further concern over the safety factor involved while transiting the narrow shipping channel in the vicinity of the Jordan Bridge.

Coast Guard Marine Safety Office, Hampton Roads, expressed in their letter dated September 11, 1992, the need to include public or commercial vessels access through the bridge at any time to assist in emergency situations.

The Hampton Roads Chamber of Commerce responded to the proposal by presenting the Coast Guard with a resolution requesting that their modifications to the proposed regulations be adopted. Their request is similar to the previous proposal except they changed heavily laden cargo vessels to commercial cargo vessels and included tugs and tows in the 2-hour advance notice requirement.

Discussion of Proposed Amendment

The International Federation of Professional and Technical Engineers, Local No. 10, requested that the regulations for this drawbridge be amended to eliminate all bridge openings during morning and evening peak highway traffic hours to help reduce highway traffic congestion, but remain open on signal during the rest of the time.

Currently, only pleasure boats are restricted from requesting bridge

openings during morning and evening rush hours. The original notice of proposed rulemaking would have closed the Jordan Bridge to commercial, recreational, and public vessels of the United States on Monday through Friday, except Federal holidays, from 6:30 a.m. to 7:30 a.m. and from 3:30 p.m. to 5 p.m. A provision that would allow the draw to open on signal at all times for vessels in distress was made a part of the proposal. Coast Guard Marine Safety Office, Hampton Roads, has expressed the need to provide on demand openings for commercial and public vessels assisting in an emergency situation.

This revision to the proposed rule allows commercial vessels carrying liquefied flammable gas or other harmful substances passage through the bridge at anytime. From 6:30 a.m. to 7:30 a.m. and from 3:30 p.m. to 5 p.m., Monday through Friday, except Federal holidays, commercial cargo vessels, and tugs and tows will be allowed passage through the bridge provided they give a 2-hour advance notice to the Jordan Bridge Office. Recreational vessels and commercial vessels that do not qualify for exemption will be restricted from passing through the bridge during the morning and evening rush hour. Public vessels of the United States and vessels in distress will be allowed passage through the bridge at any time. Also to be included in this proposal is on demand openings for commercial and/or public vessels assisting in an emergency situation. The rest of the time, the draw will be open on signal.

Allowing commercial cargo vessels passage through the bridge at any time will provide for a safer river. Because of the narrow shipping channel, ships are unable to pass each other in the river. In addition to the narrowness of the shipping lanes, there is no place along this river for vessels to tie up while waiting for a bridge opening. It is difficult to maneuver tugs and tows and seagoing vessels along this stretch of the Elizabeth River. These vessels are vulnerable to both wind and tide and if made to hold up for a bridge opening, can become uncontrollable. Vessel operators deal with operational concerns such as the current, tide and the weather. Safety is of great concern in the vicinity of this bridge given the type of cargo being transported upstream to the terminals. The risk of damage to property or to the environment is a major concern and will be greatly reduced by permitting commercial vessels carrying liquefied flammable gas passages through the bridge during rush hours. To add to the safety factor, commercial and

recreational vessels waiting for a bridge opening create a backlog of traffic on both sides which in itself creates hazardous navigation conditions. Restricting all commercial vessels during rush hours would force many different sizes and types of vessels to hold in the vicinity of the bridge. This would increase the chance of collision or allision, especially during periods of high winds, fog, rain or tidal fluctuations. Providing openings during rush hours for other commercial vessels that would fall under the 2-hour advance notice requirement will eliminate this type of disaster risk.

On July 1, 1991, the City of Chesapeake increased the toll for the Jordan Bridge from 25¢ to 50¢, one way. A review of the traffic logs three months prior and three months afterwards, revealed that highway traffic declined by 33% as a result of the toll increase. The drawlogs were also reviewed and only about 6% of total openings per day are caused by commercial vessels and occur during rush hours.

Imposing the 2-hour advance notice for certain vessels will provide motorists with an opportunity to learn about scheduled bridge openings for these vessels by radio broadcasts and any other means established by the bridge owner. Motorists will not be inconvenienced by bridge openings during rush hours since they have two alternate routes to use in reaching their destination. The waterway users have none.

In developing the proposal, the Coast Guard considered all views. The decision to exempt commercial vessels carrying liquefied flammable gas or other harmful substances during rush hour restrictions is based on the need to maintain safety along the Southern Branch of the Elizabeth River. Commercial cargo vessels will be allowed passage through this bridge during rush hours provided they give a 2-hour advance notice to the Jordan Bridge Office. This is not considered restrictive to the commercial waterway industry and is a compromise to the highway traffic crossing the Jordan Bridge.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. This opinion is based on the fact that the regulations will not unduly cause a hardship on recreational

vessels and commercial vessels that do not qualify for exemption since the bridge will only be closed one hour in the morning and one and a half hours in the afternoon.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the U.S. Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Commercial waterway users will not be unduly restricted since the majority can pass through the bridge provided a 2-hour advance notice is given. Commercial waterway users that do not fall under the 2-hour advance notice will be held up one hour in the morning and one and a half hours in the afternoon. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612, and it has determined that the proposal will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117

of title 33, Code of Federal Regulations to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 449; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. In § 117.997, paragraph (a) is revised to read as follows:

§ 117.997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albemarle and Chesapeake Canal.

(a) The draw of the Jordan (S337) bridge, mile 2.8, in Chesapeake:

(1) Shall open on signal at any time for public vessels of the United States, vessels in distress, commercial vessels carrying liquefied flammable gas or other harmful substances, and commercial and/or public vessels assisting in an emergency situation.

(2) From 6:30 a.m. to 7:30 a.m. and from 3:30 p.m. to 5 p.m., Monday through Friday, except Federal holidays:

(i) Need not open for the passage of pleasure craft or commercial vessels that do not qualify under paragraph (a)(2)(ii) of this section.

(ii) Need not open for commercial cargo vessels, including tugs and tows, unless 2 hours advance notice has been given to the Jordan Bridge Office at (804) 545-4695.

(3) Shall open on signal at all other times.

* * * *

Dated: November 10, 1992.

W.T. Leland,

Rear Admiral, U.S. Coast Guard Commander,
Fifth Coast Guard District.

[FR Doc. 92-29232 Filed 12-1-92; 8:45 am]

BILLING CODE 4910-14-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1222 and 1230

RIN 3095-AA22

Micrographic Records Management

AGENCY: National Archives and Records Administration.

ACTION: Proposed rule.

SUMMARY: NARA is proposing to amend its micrographic records management regulations to update micrographic standards, to establish agency micrographic program responsibilities, to modify coverage of temporary records, and to clarify inspection provisions. The proposed rule was developed during a review to identify

incomplete or outdated provisions in NARA regulations. This regulation will affect Federal agencies.

DATES: Written comments must be received by February 1, 1993

ADDRESSES: Comments should be sent to Director, Program Planning and Congressional Liaison Division (NAA), National Archives and Records Administration, Washington, DC 20408. **FOR FURTHER INFORMATION CONTACT:** Call Mary Ann Palmos or Nancy Allard on 202-501-5110.

SUPPLEMENTARY INFORMATION: 36 CFR part 1230 requires the use of a number of standards, which are incorporated by reference in § 1230.3. This regulation specifies use of updated editions of several standards and two new standards. Specifically, the following standards have been updated: ANSI IT9.1-1991 [formerly ANSI IT9.1-1989], ANSI IT9.11-1991 [formerly ANSI PH1.43-1985], ANSI IT2.19-1990 [formerly ANSI/ISO 5/2-1985, ANSI PH2.19-1986], ISO 3334-1991, ANSI/AIIM MS51-1991 [formerly ISO 3334-1989], and ANSI/AIIM MS41-1990 [formerly ANSI/AIIM MS41-1989]. A new standard ANSI IT9.13-1992, "Imaging Media—Photographic Films, Papers and Plates—Glossary of Terms Pertaining to Stability," defines terms used in a number of the updated standards. A new standard, ANSI/AIIM MS45-1990, "Recommended Practice for Inspection of Stored Silver-Gelatin Microforms for Evidence of Deterioration" has been added to replace AIIM Special Interest Package No. 34, July 1987, "Microspots and Aging Blemishes." Certain standards have been adopted as Federal Information Processing Standards (FIPS). We have indicated the FIPS number where appropriate in § 1230.3. Standards which have been adopted as FIPS are also available from the National Institute of Standards and Technology.

In addition to the revised standards, the following significant changes are being proposed in this rule:

In § 1230.1, references to the General Services Administration (GSA) regulations in 41 CFR subpart 201-45 are deleted. GSA's Federal Information Resources Management Regulations (FIRMR) no longer contain specific requirements for micrographic records management.

Section 1230.4 has been modified to add definitions of "background density" and "computer-assisted retrieval (CAR) system" and to reflect changes in how microfilm stock is classified. The revised ANSI IT9.1-1991 classifies film according to an "LE [life expectancy]

rating" instead of using the terms "archival microfilm" and "long term microfilm." We have deleted the definition of "Long-term film" but have retained a revised definition for "Archival microfilm" that specifies the appropriate LE rating for film stock used for permanent and unscheduled records. We have also removed the definition of "Archival storage conditions" because that term was not used elsewhere in part 1230.

A new § 1230.7 is added to specify agency responsibilities for managing micrographic records. This section has been introduced to improve accountability for microform records. It is comparable to the agency program responsibilities for audiovisual and electronic records management found in §§ 1232.4 and 1234.10, respectively. We have also added a reference to microform records in the provisions on general records management responsibilities contained in 36 CFR 1222.20.

In § 1230.12(d)(1)(i), we are deleting provisions relating to aperture card applications. Aperture cards are not an appropriate format for original film of permanent and unscheduled records because the paper stock and adhesives used in preparing the aperture cards adversely affect the microfilm. Agencies may create aperture cards for permanent and unscheduled records by using a duplicate copy of the camera negative microfilm.

In § 1230.14(b), we are deleting the exception to polyester-based silver gelatin type film for splicing cellulose triacetate film to existing rolls of cellulose film. This exception was made some time ago when cellulose film was widely used. Cellulose microfilm stock is not widely produced and we believe that the need for the exception no longer exists.

Section 1230.16 has been revised to specify film stock and processing requirements only for temporary records that must be maintained for more than 100 years. Because the quality standards for temporary records cited in the current § 1230.16(c) are only advisory, we propose to remove them in this rule.

In § 1230.20, we have updated the standards for storage of permanent and unscheduled microform records and revised the requirement for storage of temporary microform records. At this time we have not adopted the relative humidity standard for extended term storage of permanent and unscheduled microforms. The standard calls for a relative humidity between 20% RH and 30% RH. We have instead required a constant relative humidity of 35%, plus or minus 5 percent. Our very

preliminary research indicates that the lower relative humidity required by the standard may cause preservation problems for older microfilm that has previously been stored at a higher relative humidity.

The current § 1230.20 states that temporary microforms may be stored under the same conditions as temporary paper records. Because paper records may retain their legibility under conditions that are damaging to microforms, e.g., excessive heat or humidity, the current statement may not be correct for temporary microform records that must be retained for an extended period. We are changing the provision for storage of temporary microform records to require that such records be stored under conditions that will ensure their preservation for their full retention period. The storage conditions specified in ANSI IT9.2-1991 can be used as a guideline for determining appropriate storage conditions for preserving temporary microforms, but the standard is not mandatory for temporary records.

Section 1230.22 has been rewritten to improve its clarity. In paragraph (a)(1), we have cited ANSI/AIIM MS 45-1990, which contains the prescribed inspection technique, instead of describing the technique in the regulation. We have rewritten the provisions relating to the inspection log (current paragraph (a)(5)) and for the inspection report (current paragraph (a)(6)) to clarify their relationship. In paragraph (a)(5)(i)(A) we are specifying that batch information be provided; without the specific batch information, NARA cannot conduct appropriate inspections when the records are transferred to records centers or to the National Archives.

Minor changes are made to §§ 1230.24 and 1230.26 to clarify that the provisions apply to the microform designated as the archival microform copy that will be transferred to the National Archives of the United States.

This is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. In accordance with the Regulatory Flexibility Act, I hereby certify that this proposed rule will not have a significant impact on small entities.

List of Subjects

36 CFR Part 1222

Archives and records.

36 CFR Part 1230

Archives and records, Incorporation by reference, micrographics.

For the reasons set forth in the preamble, NARA proposes to amend

chapter XII of title 36 of the Code of Federal Regulations as follows:

PART 1222—CREATION AND MAINTENANCE OF RECORDS; ADEQUATE AND PROPER DOCUMENTATION

1. The authority citation for part 1222 continues to read as follows:

Authority: 44 U.S.C. 2904, 3101, and 3102.

2. In § 1222.20, paragraph (b)(1) is revised to read as follows:

§ 1222.20 Agency responsibilities.

* * * * *

(b) * * *

(1) Assign to one or more offices of the agency the responsibility for the development and implementation of agencywide programs to identify, develop, issue, and periodically review recordkeeping requirements for all agency activities at all levels and locations and for all media, including paper, microform, audiovisual, cartographic, and electronic records; and notify the Office of Records Administration (NI), National Archives and Records Administration, Washington, DC 20408 of the assignment.

* * * * *

PART 1230—MICROGRAPHIC RECORDS MANAGEMENT

3. The authority citation for part 1230 continues to read as follows:

Authority: 44 U.S.C. 2907, 3302, and 3312.

4. Section 1230.1 is revised to read as follows:

§ 1230.1 Scope of part.

This part provides standards for using micrographic technology in the creation, use, storage, inspection, retrieval, preservation, and disposition of Federal records.

5. Section 1230.3 is revised to read as follows:

§ 1230.3 Publications incorporated by reference.

(a) *General.* The following publications cited in this part are hereby incorporated by reference. They are available from the issuing organizations at the addresses listed in this section. They are also available for inspection at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval, and a notice of any change in these materials

will be published in the Federal Register.

(b) *American National Standards Institute (ANSI and International (ISO) standards.* ANSI and ISO standards cited in this part are available from the American National Standards Institute, 11 West 42nd St., New York, NY 10036.

ANSI IT2.19-1990, Photography (Sensitometry)—Density Measurements—Geometric Conditions for Transmission Density.

ANSI IT9.1-1991, Imaging Media (Film)—Silver Gelatin Type—Specifications for Stability.

ANSI IT9.2-1991, Imaging Media—Photographic Processed Films, Plates, and Papers—Filing Enclosures and Storage Containers.

ANSI IT9.11-1991, Photography (Film)—Processed Safety Film—Storage.

ANSI/ISO 5/3-1984, ANSI PH2.18-1985, Photography (Sensitometry)—Density Measurements—Spectral Conditions.

(c) *Association of Information and Image Management (AIIM) Standards.*

The following AIIM standards are available from the Association of Information and Image Management, 1100 Wayne Avenue, Suite 1100, Silver Spring, MD 20910. AIIM standards that are identified as Federal Information Processing Standards (FIPS) are also available from the address shown in paragraph (d).

ANSI/AIIM MS1-1988, Recommended Practice for Alphanumeric Computer-Output Microforms—Operational Practices for Inspection and Quality Control. (FIPS 82).

ANSI/AIIM MS5-1991, Microfiche. (FIPS 54-1).

ANSI/AIIM MS14-1988, Specifications for 16mm and 35mm Roll Microfilm. (FIPS 54-1).

ANSI/AIIM MS19-1987, Recommended Practice for Identification of Microfilm.

ANSI/AIIM MS23-1991, Practice for Operational Procedures/Inspection and Quality Control of First Generation, Silver-Gelatin Microfilm of Documents.

ANSI/AIIM MS43-1988, Recommended Practice for Operational Procedures/Inspection and Quality Control for Duplicate Microfilms of Documents and From COM.

ANSI/AIIM MS45-1990, Recommended Practice for Inspection of Stored Silver-Gelatin Microforms for Evidence of Deterioration.

ISO 3334-1991, ANSI/AIIM MS51-1991, Micrographics—ISO resolution test chart No. 2—Description and use.

(d) *National Institute of Standards and Technology (NIST) publications.* The following publication is available from the National Institute of Standards

and Technology, Office of Standard Reference Materials, Rm. B311 Chemistry, Gaithersburg, MD 20899.

NIST-SRM 101a, Microcopy Resolution Test Chart (ISO Test Chart No. 2), certified June 1, 1990.

6. In § 1230.4, the definitions of "Archival storage conditions" and "Long-term Film" are removed, the definitions of "Background density" and "Computer-assisted retrieval (CAR) system" are added in alphabetical order, and the definition of "Archival microfilm" is revised to read as follows:

§ 1230.4 Definitions.

* * * * *

Archival microfilm. A photographic film that meets the standards described in § 1230.14 and that is suitable for the preservation of permanent records when stored in accordance with § 1230.20(a). Such film must conform to film designated as LE 500 in ANSI IT9.1-1991, as defined in ANSI IT9.13-1992.

Background density. The opacity of the area of the microform not containing information.

* * * * *

Computer-assisted retrieval (CAR) system. A records storage and retrieval system, normally microfilm-based, that uses a computer for indexing, automatic markings such as blips or bar codes for identification, and automatic devices for reading those markings and, in some applications, for transporting the film for viewing.

* * * * *

7. Subparts B, C, and D are redesignated as subparts C, D, and E, respectively, and a new subpart B, consisting of new § 1230.7, is added to read as follows:

Subpart B—Program Requirements

§ 1230.7 Agency responsibilities.

The head of each Federal agency shall ensure that the management of microform records incorporates the following elements:

(a) Assigning responsibility to develop and implement an agencywide program for managing all records on microform media and notifying the National Archives and Records Administration (NI), Washington, DC 20408 of the name and title of the person assigned the responsibility.

(b) Integrating the management of microform records with other records and information resources management programs of the agency.

(c) Incorporating microform records management objectives, responsibilities, and authorities in pertinent agency directives and disseminating them throughout the agency as appropriate.

(d) Establishing procedures for addressing records management concerns, including recordkeeping and disposition requirements, before approving new microform records systems or enhancements to existing systems.

(e) Ensuring that adequate training is provided for the managers and users of microform records.

(f) Developing and securing NARA approval of records schedules covering microform records, and ensuring proper implementation of the schedule provisions.

(g) Ensuring that computerized indexes associated with microform records, such as in a computer-assisted retrieval (CAR) system, are scheduled in accordance with part 1234 of this chapter.

(h) Reviewing the agency's program periodically to ensure compliance with NARA standards in this part for the creation, storage, use, inspection, and disposition of microform records.

8. In § 1230.12, paragraphs (d)(1)(i) and (d)(2) are revised to read as follows:

§ 1230.12 Preparatory steps prior to filming.

* * * * *

(d) * * *

(1) * * *

(i) *Source documents.* The formats described in ANSI/AIIM MS14-1988 shall be used for microfilming source documents on 16mm and 35mm roll film. A reduction ratio no greater than 1:24 is recommended for typewritten or correspondence types of documents. See ANSI/AIIM MS 23-1991 for determining the appropriate reduction ratio and format for meeting the image quality requirements.

* * * * *

(2) *Microfiche.* For microfilming source documents or computer generated information (COM) on microfiche, the appropriate formats and reduction ratios prescribed in ANSI/AIIM MS5-1990 shall be used as specified for the size and quality of the documents being filmed. See ANSI/AIIM MS23-1991 for determining the appropriate reduction ratio and format for meeting the image quality requirements.

* * * * *

§ 1230.14 [Amended]

9. In the list below, for each paragraph in § 1230.14 indicated in the left column, the references indicated in the middle column are removed and the

references indicated in the right column are added in their place:

Paragraph	Remove	Add
1230.14(c)	ANSI IT9.1-1989. ANSI IT9.1-1991.	MS23-1983 MS23-1991
1230.14(d)(1)(i)	ANSI/AIIM MS23-1983: ISO 3334-1989	ANSI/AIIM MS23-1991 ISO 3334-1991
1230.14(d)(2) ...	ANSI/AIIM MS23-1983. ANSI/ISO 5/2-1985.	ANSI/AIIM MS23-1991 ANSI IT2.19-1990

10. In § 1230.14, paragraphs (a) and (b) are revised to read as follows:

§ 1230.14 Film and image requirements for permanent records and unscheduled records.

(a) *Application.* The following standards shall apply to the microfilming of permanent records where the original paper record will be destroyed or otherwise disposed of. Systems that produce original permanent records on microfilm with no paper originals, such as computer output microfilm (COM), shall be designed so that they produce microfilm which meets the standards of this section. Unscheduled records from systems such as COM must also meet the standards of this section. Prior NARA approval of a SF 115 is required before unscheduled paper records are disposed of after microfilming.

(b) *Film stock standards.* Only polyester-based silver gelatin type film that conforms to ANSI IT9.1-1991 for LE 500 film shall be used in all applications.

* * * * *

10. Section 1230.16 is revised to read as follows:

§ 1230.16 Film and image requirements for temporary records, duplicates, and user copies.

(a) *Temporary records with a retention period over 99 years.* Agencies shall follow the film and image requirements in § 1230.14.

(b) *Other temporary records.* Agencies shall select an appropriate film stock that meets agency needs for temporary microforms to be kept for less than 100 years and ensures the preservation of the microforms for their full retention period. NARA does not require use of particular standards for processing microfilm of such temporary records; agencies may consult appropriate ANSI standards or manufacturer's instructions.

11. Section 1230.20 is revised to read as follows:

§ 1230.20 Storage.

(a) *Permanent and unscheduled records.* The extended term storage conditions specified in ANSI IT9.11-1992 and ANSI IT9.2-1991 are required for storing permanent and unscheduled microform records, except that the relative humidity of the storage area shall be a constant 35% RH, plus or minus 5%. Non-silver copies of permanent or unscheduled microforms must not be stored in the same storage area as silver gelatin originals or duplicate copies.

(b) *Temporary records.* Temporary microform records must be stored under conditions that will ensure their preservation for their full retention period. Agencies may consult ANSI IT9.2-1991 to determine appropriate storage conditions; however, NARA does not require adherence to this standard for temporary records.

12. In § 1230.22, paragraphs (a)(1), (a)(4)(i), and (a)(5) are revised, paragraph (a)(6) is removed, paragraphs (a)(7) and (a)(8) are redesignated paragraphs (a)(6) and (a)(7), and newly redesignated paragraph (a)(7) is revised to read as follows:

§ 1230.22 Inspection.

(a) *Permanent and unscheduled records.*

(1) Master films of permanent records microfilmed in order to dispose of the original record and master films of permanent records originally created on microfilm shall be inspected by the agency creating the film when the films are 2 years old and, until they are transferred to a Federal records center or to the National Archives, every 2 years thereafter. The inspection shall be made in accordance with ANSI/AIIM MS45-1990.

* * * * *

(4) * * *

(i) An inspection for aging blemishes following ANSI/AIIM MS 45-1990;

* * * * *

(5) An inspection report shall be prepared, and a copy shall be furnished to NARA in accordance with § 1230.26(b). The inspection report shall contain:

(i) A summary of the inspection findings, including:

(A) A list of batches by year that includes the identification numbers of microfilm rolls and microfiche in each batch;

(B) The quantity of microforms inspected;

(C) An assessment of the overall condition of the microforms;

(D) A summary of any defects discovered, e.g., redox blemishes or base deformation; and

(E) A summary of corrective action taken.

(ii) A detailed inspection log created during the inspection that contains the following information:

(A) A complete description of all records inspected (title; roll or fiche number or other unique identifier for each unit of film inspected; security classification, if any; and inclusive dates, names, or other data identifying the records on the unit of film);

(B) The date of inspection;

(C) The elements of inspection (see subparagraph (a)(4) of this section);

(D) Any defects uncovered; and

(E) The corrective action taken.

* * * * *

(7) Inspection shall be performed in an environmentally controlled area in accordance with ANSI/AIIM MS45-1990.

* * * * *

13. Section 1230.24(a) is revised to read as follows:

§ 1230.24 Use of permanent or unscheduled microform records.

(a) The silver gelatin original microform or duplicate silver gelatin microform created in accordance with § 1230.14 of this part (archival microform) shall not be used for reference purposes. Duplicates shall be used for reference and for further duplication on a recurring basis or for large-scale duplication, as well as for distribution of records on microform. Agency procedures shall ensure that the archival microform remains clean and undamaged during the process of making a duplicating master.

* * * * *

14. Section 1230.26(a) is revised to read as follows:

§ 1230.26 Disposition of microform records.

* * * * *

(a) The silver gelatin original (or duplicate silver gelatin microform created in accordance with § 1230.14) plus one microform copy of each permanent or unscheduled record microfilmed by an agency, shall be transferred to an approved agency records center, the National Archives of the United States, or to a Federal records center, at the time that the records are to be transferred in accordance with the approved records disposition schedule. Non-silver copies must be packaged separately from the silver gelatin original or silver duplicate microform copy and labeled clearly as non-silver copies.

* * * * *

Dated: November 5, 1992.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 92-28944 Filed 12-1-92; 8:45 am]

BILLING CODE 7515-01-F

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[CA-9-3-5309; FRL-4538-1]

Approval and Promulgation of Implementation Plans California State Implementation Plan Revision; Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing approval of an addition to the California State Implementation Plan (SIP) that was adopted by the Bay Area Air Quality Management District (Bay Area AQMD) on January 4, 1989. The California Air Resources Board (CARB) submitted this revision to EPA on March 26, 1990. The revision concerns the adoption of a new rule, Bay Area AQMD Regulation 8, Rule 44 (Rule 8-44), Marine Vessel Loading Terminals, which controls emissions from the loading of organic liquids, primarily gasoline and crude oil, into marine vessel tanks. EPA has evaluated Rule 8-44 and is proposing to approve it under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the Clean Air Act, as amended in 1990 (CAA or the Act).

DATES: Comments must be received on or before January 4, 1993.

ADDRESSES: Comments may be mailed to: Esther Hill, Northern California, Nevada, and Hawaii Rulemaking Section (A-5-4), Air and Toxics Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule and EPA's evaluation report are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the rule are also available for inspection at the following locations:

California Air Resources Board,
Stationary Source Division, Rule
Evaluation Section, 2020 "L" Street,
Sacramento, CA 95814.

Bay Area Air Quality Management
District, 939 Ellis Street, San
Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT:
William E. Davis, Jr., Northern
California, Nevada, and Hawaii
Rulemaking Section (A-5-4), Air and

Toxics Division, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1183.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Act, as amended in 1977 (1977 CAA or pre-amended Act) that included the San Francisco-Bay Area. 43 FR 8964; 40 CFR 81.305. Because the San Francisco-Bay Area was unable to reach attainment by the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238. On May 26, 1988, EPA notified the Governor of California that the Bay Area AQMD's portion of the SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in existing SIP rules be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amended guidance.¹ EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Bay Area AQMD is classified as moderate;² therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules to EPA for

incorporation into its SIP on March 26, 1990, including the rule being acted on in this notice. This notice addresses EPA's proposed action on Bay Area AQMD's Rule 8-44, Marine Vessel Loading Terminals. This submitted rule was found to be complete on June 20, 1990 pursuant to EPA's completeness criteria adopted February 16, 1990 (55 FR 5830) and set forth in 40 CFR part 51, Appendix V³ and is being proposed for approval into the SIP.

Rule 8-44 is a new rule which requires control of volatile organic compound (VOC) emissions from the loading of organic liquids, such as gasoline or crude oil, into marine vessel tanks. VOCs contribute to the production of ground level ozone and smog. Bay Area AQMD's Rule 8-44 was adopted as part of the District's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call. Although submitted prior to enactment of the 1990 Amendments, the submittal also responds to the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action on the Bay Area AQMD's Rule 8-44.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). However, EPA has not yet developed a CTG document applicable

to marine vessel loading sources.⁴ Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

Bay Area's Rule 8-44, Marine Vessel Loading Terminals, is a new rule and includes the following emission limits. This rule prohibits, as of July 1, 1991, the loading of organic liquids into any marine vessel tank unless the emissions of precursor organic compounds are limited to no more than 5.7 grams per cubic meter (2 lbs. per 1000 barrels) or unless such emissions are reduced by at least 95% by weight from uncontrolled emissions. The 95% vapor control represents the entire system control since the rule requires that all emissions resulting from marine tank loadings must be captured for processing. Rule 8-44 also includes recordkeeping and test method requirements for compliance purposes. A detailed discussion of the rule's enforcement and compliance elements is included in the Technical Support Document for Rule 8-44 which is available from the EPA Region 9 office.

EPA has evaluated Bay Area's submitted Rule 8-44 and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, Bay Area AQMD rule 8-44 is being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 et. seq., EPA must

¹ Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT. 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (The Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

² The San Francisco-Bay Area retained its designation and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

³ EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the amended Act. See 56 FR 42216 (August 26, 1991).

⁴ Section 183(f) of the CAA provides the Administrator with authority to regulate certain types of VOC emissions from marine vessels. Once EPA establishes such emissions applicable to specific transfers of materials from marine vessels, the State or political subdivision cannot adopt or enforce a standard that is inconsistent with, and less stringent than, the federal standard. However, since no federal standard currently exists and because the regulation being proposed for approval today strengthens the existing SIP, the District may adopt and enforce this regulation. If EPA adopts a federal standard applicable for the same sources, the District may only enforce this regulation to the extent that it is more stringent than the federal standard.

prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under sections 110 and part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis for a SIP approval would constitute Federal inquiry into the economic reasonableness of the State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 1 action. The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7671q.

Dated: September 8, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92-29235 Filed 12-1-92; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[IL 14-2-5621; FRL-4540-9]

Approval and Promulgation of Implementation Plans; IL

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to disapprove a submittal by the State of Illinois of a requested site-specific revision to the Illinois State Implementation Plan (SIP) for sulfur dioxide (SO₂). This proposed revision would increase the allowable hourly emission of SO₂ at the Central Illinois Public Service Company's Coffeen

Generating Station (CIPS Coffeen) and includes a fuel quality limit of 7.29 pounds of sulfur dioxide per million British Thermal Units (lbs SO₂/MMBTU). The revision is applicable when the facility uses fuel from a specified source. USEPA is proposing to disapprove this SIP revision request because the rule does not specify how the source of the fuel used by CIPS Coffeen will be determined or reported. This site-specific SIP revision was submitted at the discretion of the State.

DATES: Comments on this revision and on the proposed USEPA action must be received by February 1, 1993.

ADDRESSES: Copies of the SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Mary Onischak at (312) 353-5954 before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (5AR-18), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mary Onischak, Regulation Development Section, U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353-5954.

SUPPLEMENTARY INFORMATION: CIPS Coffeen is located in Montgomery County, Illinois, which has been designated attainment for SO₂. On September 22, 1980 (45 FR 62804), USEPA approved portions of Illinois rule 204(e)(2) for fuel combustion sources located outside of the Chicago, St. Louis (Illinois Portion), and Peoria major metropolitan areas. Note that rule 204(e)(2) has been recodified as section 214.184 of Title 35 of the Illinois Administrative Code (35 IAC). Illinois did not submit a modeled demonstration of attainment to show that all the emission limits contained in rule 204(e)(2) would protect the National Ambient Air Quality Standards (NAAQS). A modeled attainment demonstration is required to support the approval of emission limits which relax previously approved limits. Therefore, in its rulemaking, USEPA approved rule 204(e)(2) only for thirteen sources for which the State certified that the rule did not represent a relaxation of the earlier federally enforceable SIP. CIPS Coffeen is one of the thirteen sources for which rule 204(e)(2) was approved. The

emissions allowed for CIPS Coffeen by rule 204(e)(2) are 55,555 pounds SO₂ per hour (lbs SO₂/hr). This is equivalent to a fuel quality limit of 5.8 lbs SO₂/MMBTU at full load. This equivalent rate was provided by the State during the public comment on rule 204(e)(2).

Stack tests conducted in October of 1974 indicated that CIPS Coffeen would emit a maximum of 55,555 lbs SO₂/hr. However, a subsequent stack test in June of 1986 showed that the facility's actual emissions were about 65,000 lbs SO₂/hr. Both CIPS Coffeen and the Illinois Environmental Protection Agency (IEPA) noted that the sulfur content of the 1974 coal was actually higher than the sulfur content of the 1986 coal. No one could explain the discrepancy, but IEPA and USEPA considered the 65,000 lbs SO₂/hr result to be an accurate measure of current emissions.

Consequently, CIPS Coffeen must now operate under a load restriction to avoid exceeding the 55,555 lbs SO₂/hr limit.

To alleviate the load restriction, IEPA developed a site-specific SO₂ SIP revision for CIPS Coffeen, and submitted it to USEPA on November 16, 1988. The submittal included a modeling study intended to show that the proposed SO₂ emission limit for CIPS Coffeen will not cause or contribute to a violation of the NAAQS. The proposed revision increases the allowable emissions of SO₂ from 55,555 lbs/hr to 65,194 lbs/hr and includes a fuel quality limit of 7.29 lbs SO₂/MMBTU. If this SIP revision were approved, CIPS Coffeen would be able to operate at full load on its present fuel. The SIP revision also requires CIPS Coffeen to conduct an ambient SO₂ monitoring and dispersion modeling program designed to ensure that the NAAQS will not be violated.

CIPS Coffeen currently burns coal only from the Monterey Coal Company's Mine Number 1 (Monterey), and their coal contract with Monterey extends until 2003. It is clear from the Illinois Pollution Control Board record that the CIPS Coffeen SIP revision is designed to offer relief only from the load restriction required by the 55,555 lbs SO₂/hr limit. The type of coal (i.e., fuel quality and sulfur content) used at the facility will not change. To ensure this, the proposed SIP revision is only applicable as long as CIPS Coffeen burns Monterey coal. If CIPS Coffeen stops using coal from the Monterey mine, then the emission limit reverts to 55,555 lbs SO₂/hr. The prescribed method to show compliance with the emission limit in either case is a stack test in accordance with 35 IAC section 214.101(a).

The Illinois Pollution Control Board adopted the revised sulfur limitations

for CIPS Coffeen on September 22, 1988, as 35 IAC section 214.562. The IEPA submitted the CIPS Coffeen SIP revision to USEPA on November 16, 1988. USEPA has evaluated the CIPS Coffeen revision to determine (1) whether the modeling analysis predicts that the emission limits in the revision are sufficient to protect the SO₂ NAAQS (including interstate considerations), (2) whether the inputs to the model reflect acceptable stack parameters, (3) whether prevention of significant deterioration (PSD) was acceptably addressed, and (4) whether the revision will be fully federally enforceable.

I. Air Quality Modeling

In support of the SIP revision request, IEPA submitted modeling performed by a contractor for CIPS Coffeen. The basic study, entitled "SO₂ Modeling Analysis of the CIPS Coffeen Station Units 1 and 2," was completed in June 1986. A supplement was prepared in November 1986 in response to several USEPA comments. The modeling analyses were based on the modeling guidelines in place at the time the analyses were performed, i.e., "Guideline on Air Quality Models" (April 1978) and "Regional Workshops on Air Quality Modeling: A Summary Report" (April 1981). Since that time, USEPA has promulgated revisions to its modeling guidelines, i.e., the September 9, 1986, publication of "Guideline on Air Quality Models (Revised)" July 1986; and the January 6, 1988, publication of "Supplement A to the Guideline on Air Quality Models (Revised)," July 1987. Because the modeling was completed prior to the latest revisions, USEPA accepted the analyses.

The air quality modeling indicates that the NAAQS will be protected, given the modeled emission rate of 8214.3 grams per second (g/s) for CIPS Coffeen. This emission rate corresponds to the 65,194 lbs SO₂/hr emission limit and the 7.29 lbs SO₂/MMBTU fuel quality limit in Illinois' proposed revision. The fuel quality limit is based upon a maximum heat input value of 8943 MMBTU/hr. The modeling indicates that the predicted 3-hour (high, second high) concentration will be 1291 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) and the predicted 24-hour (high, second high) concentration will be 283 $\mu\text{g}/\text{m}^3$.

The modeling results demonstrate that short-term ambient concentrations due to CIPS Coffeen decrease with distance beyond 10 kilometers (km) from the source. The Missouri/Illinois border is approximately 75 km to the west of CIPS Coffeen and is the closest interstate border. The interstate impacts

from this SIP relaxation should be minimal.

II. Stack Height Parameters

CIPS Coffeen utilizes two coal-fired cyclone boilers, Units 1 and 2. Unit 1, which came on line in 1965, and Unit 2, which came on line in 1972, were modeled with a design maximum heat input of 8942.9 million British Thermal Units per hour (MMBTU/hr). Emissions from both boilers exit through a common stack which is 152.4 meters (m) above the ground.

USEPA promulgated its Stack Height Regulations on July 8, 1985 (50 FR 27892). The regulations prohibit dispersion credit due to the merging of gas streams of existing stacks after December 31, 1970. At CIPS Coffeen, the construction of Unit 2 began in March 1969 and the 152.4 m stack was "in existence" with plans to tie in the emissions from Unit 1 prior to December 31, 1970. USEPA agreed with IEPA that the merging of gas streams from Unit 1 and Unit 2 are exempt from the Stack Height Regulations (54 FR 32073), and thus, the CIPS Coffeen modeling analyses were based on acceptable stack height parameters.

III. Prevention of Significant Deterioration (PSD)

Since CIPS Coffeen is located in an area which has been designated attainment for SO₂, review of this submittal must address PSD program requirements. The proposed SIP revision allows CIPS Coffeen to increase emissions from 55,555 lbs SO₂/hr to 65,194 lbs SO₂/hr, which is an increase of 9639 lbs SO₂/hr or approximately 42,000 tons per year (tpy). This increase is due to the removal of the load restriction, not to a fuel change. Therefore, while the proposed SIP relaxation will increase SO₂ emissions and will consume PSD increment, it is not subject to PSD review as a major modification, because the PSD program exempts increases in hours of operation. Further information about PSD review of this proposed SIP revision is contained in the Technical Support Document (TSD) available from the Region 5 office listed above.

IV. Enforcement Deficiencies

There are a number of deficiencies in section 214.562 which affect the rule's Federal enforceability. Because work on this rule was completed before many of these deficiencies had been identified in the State rules, some of the enforcement deficiencies described in today's notice will not affect USEPA's rulemaking action, but are listed in order to notify the State that USEPA will not approve

future actions which contain enforcement deficiencies. Deficiencies that exist in the requirements for compliance data recordkeeping and reporting, however, make section 214.562 impossible to enforce, and therefore form the basis for USEPA's decision to disapprove the site-specific SIP revision for CIPS Coffeen. These deficiencies are detailed below.

The emission limits in section 214.562 apply to CIPS Coffeen "whenever" the facility uses Monterey coal. This seems to indicate that the facility could switch back and forth between Monterey coal and other fuels. The rule does not require CIPS Coffeen to provide any verification that Monterey coal is being burned. This is important because CIPS Coffeen's emission limit reverts back to 55,555 lbs/hr if the facility is not using Monterey coal. The SIP revision must specify recordkeeping and reporting requirements to show the exclusivity of Monterey coal and to notify the regulatory agency prior to changes in fuel supplier. Without proper notification, it would be difficult to determine the applicable emission limit to enforce at a given time.

CIPS Coffeen's reporting requirements must specify the format and frequency of data reporting. Emissions data need to be recorded in units consistent with the emission limit, retained on site for at least 2 years, and made available to the regulatory agency upon request. In particular, for any hour during which CIPS Coffeen burns in its Boiler Units 1 and/or 2 any coal that had not been mined exclusively from the Monterey Coal Company's Mine No. 1, the facility must record the fuel quality (pounds SO₂ per million British Thermal Units) and the amount used. These records must be reported quarterly to the regulatory agency.

On June 12, 1991, USEPA compiled a list of enforcement deficiencies in SO₂ plans nationwide. This list is known as the Yellow Book. Illinois received a copy of the Yellow Book on June 28, 1991. USEPA intends to correct these deficiencies through a nationwide effort coordinated by Headquarters. The November 16, 1988, submittal for CIPS Coffeen contains enforcement deficiencies which had not been identified in 1988. Those deficiencies are being addressed within the Yellow Book rule correction effort.

In view of the fact that the Yellow Book enforcement deficiencies had not been identified as grounds for disapproval when the November 16, 1988, SIP revision for CIPS Coffeen was originally submitted, USEPA does not consider these deficiencies to be

grounds for disapproval of the site-specific SIP revision for CIPS Coffeen under the grandfathering policy, since the enforcement deficiencies identified will be addressed at a later date. This submittal meets the requirements for grandfathering described in the June 6, 1988, grandfathering guidance memorandum from the Director of the Office of Air Quality Planning and Standards to the Regional Air Division Directors.

While USEPA is not today citing these deficiencies as grounds for disapproval of the November 16, 1988, submittal, it should be noted that any future SIP revisions submitted by the State will not be approved if enforcement deficiencies remain within the rules. Therefore, for the State's reference, the following paragraphs describe the "Yellow Book" deficiencies in the site-specific SIP revision for CIPS Coffeen.

It is unclear how the limits set forth in section 214.562(a) are to be applied to Units 1 and 2. The rule should clarify whether the emission limits apply to each boiler separately or to the total emissions from the single stack.

The meaning of the term "legally able," as used in sections 214.562 (b) and (d), should be clarified.

The averaging time for the 7.29 lbs SO₂/MMBTU limit is not specified. The rule must specify the applicable averaging time associated with the emission limit. This averaging time must be consistent with the averaging times in the SO₂/NAAQS.

The rule requires a stack test in accordance with section 214.101(a), which allows a choice between Methods 6, 6A, 6B, or 6C, "as appropriate." The rule should specify which test method is appropriate for CIPS Coffeen.

The rule does not clearly delineate the process of determining compliance. The SIP revision requires one stack test to verify that CIPS Coffeen is complying with its new emission limit. Stack test methods are listed in 35 IAC section 214.101(a), which was approved by USEPA on June 26, 1992 (57 FR 28617). The CIPS Coffeen rule allows Illinois to request additional stack tests in the future, but it should prescribe a specific schedule for additional stack testing to verify future compliance. In addition, the rule does not set forth formulae for converting compliance test results to the appropriate units, nor does it specify requirements as to the sampling volume, the sampling time of the run, or the number of runs necessary to make a complete test. The site-specific SIP revision for CIPS Coffeen also fails to explicitly state the conditions under which stack tests should be conducted at the facility. Stack tests which are to

be used to verify compliance with emission limits must be conducted under worst-case conditions, so that the facility may not reduce load or emissions from normal operating levels solely to pass an emissions test.

The rule does not provide for determining compliance on a continuous basis. To ensure continuous compliance, the rule should require either continuous emission monitoring or daily coal sampling and analysis, associated with an averaging time consistent with protection of the NAAQS.

V. Proposed Rulemaking Action and Solicitation of Comments

USEPA proposes to disapprove the incorporation of the State's November 16, 1988, site-specific revision request into the SIP because of the compliance data recordkeeping and reporting deficiencies identified above. The 55,555 lbs SO₂/hr emission limit remains the applicable limit for this facility.

Illinois has agreed to resolve the recordkeeping and reporting deficiencies in this site-specific SIP revision by adding provisions to CIPS Coffeen's operating permits to address Federal recordkeeping and reporting requirements. Illinois' permit program is expected to be approved by USEPA and incorporated into the Illinois SIP in the near future. Permits issued under this federally enforceable State operating permit program (FESOP) may serve as part of the SIP and may be used to address certain SIP deficiencies. USEPA agrees that the addition of specific recordkeeping and reporting requirements to the requirements within a federally enforceable State operating permit is an acceptable approach to ensure compliance with the requirements of the SIP. Therefore, if the State adequately revises CIPS Coffeen's operating permit to resolve the enforcement deficiencies noted above before the public comment period in today's **Federal Register** notice expires, USEPA will publish a notice of final approval of the November 16, 1988, site-specific SIP revision for CIPS Coffeen in the **Federal Register**. If the State fails to adequately revise the operating permit, USEPA will disapprove the SIP revision for CIPS Coffeen.

Public comment is solicited on the proposed SIP revision and USEPA's proposed rulemaking action. Comments received by the date indicated above will be considered in the development of USEPA's final rule.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future

request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action affects only one source, CIPS Coffeen. CIPS Coffeen is not a small entity. Therefore, USEPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401-7671(q).

Dated: November 13, 1992.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 92-29236 Filed 12-1-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[GEN Docket No. 90-357; FCC 92-466]

Establishment and Regulation of New Digital Audio Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to allocate the 2310-2360 MHz band for

satellite digital audio radio services (DARS) with a complementary terrestrial component. This proposed allocation will implement an allocation obtained at the 1992 World Administrative Radio Conference (WARC-92). In addition, the Commission solicits comment on various technical and regulatory issues related to the introduction of both satellite and terrestrial DARS in the United States. The intent of these actions is to provide spectrum for the future implementation of satellite DARS, and, in light of recent developments since the Commission adopted the Notice of Inquiry, 55 FR 34940, August 27, 1990, in this proceeding, to update the Commission's record in order to assist it in making specific technical and regulatory proposals in the future.

DATES: Comments are due on January 29, 1993. Reply comments are due on March 1, 1993.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Damon C. Ladson, Office of Engineering and Technology, Frequency Allocation Branch, (202) 653-8106.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making and Further Notice of Inquiry adopted October 8, 1992, and released November 6, 1992. This action will not add to or decrease the public reporting burden. The full text of the Commission document is available for inspection and copying during regular business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC and also may be purchased from the Commission's duplication contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW., Washington, DC 20036.

Summary of Notice of Proposed Rule Making and Further Notice of Inquiry

1. The Notice of Proposed Rule Making (NPRM) proposes to allocate the 2310-2360 MHz band to satellite DARS on a primary basis. This proposal is consistent with the final results of WARC-92. The 50 MHz of spectrum proposed is part of the 2310-2380 MHz band which is currently allocated to non-Government mobile and Government mobile and radiolocation services on a shared, co-primary basis and used primarily for aeronautical telemetry operations. It is likely that it would be difficult for these types of operations to continue operating on a primary basis in the 2310-2360 MHz band if satellite DARS is introduced on

these frequencies. Consequently, it is proposed that those stations currently operating between 2310-2360 MHz be reaccommodated in the upper portion of the band between 2360-2390 MHz. It is also proposed that upon adoption of final rules, existing services be permitted in the 2310-2360 MHz band on a secondary basis only.

2. The Further Notice of Inquiry portion of this item solicits comment on various aspects of satellite and terrestrial DARS to update the Commission's record and to assist it in developing specific technical and regulatory proposals. In the Notice of Inquiry in this proceeding, the Commission requested comment on broad issues concerning the future of DARS in the United States. During the intervening two years much information has been developed, particularly of a technical nature, that may bear upon how DARS is ultimately introduced in this country. However, this information is not part of the Commission's record in this proceeding. Therefore, the Commission solicits comment on recent DARS technical developments, specifically with regard to the conversion of analog AM and FM broadcasting to digital broadcasting within the existing radio broadcast bands. The Commission requests specific comment on the feasibility of such technology. In addition, the Commission invites commenters to address general policy and regulatory issues the Commission should consider as it evaluates the introduction of DARS.

3. In the item, the Commission also invites commenters to address other matters pertinent to both satellite and terrestrial DARS. Specific proposals regarding other matters—regulatory policies, service rules, technical standards and consideration of pioneer's preference requests—will be the subject of future action.

4. Initial Regulatory Flexibility Analysis: Pursuant to the Regulatory Flexibility Act of 1980, the Commission finds as follows:

A. Reason for Action

This action is being taken to implement the digital Broadcast Satellite (sound) Service and complementary terrestrial service allocation that the United States obtained at WARC-92.

B. Objective

The objective of this proposal is to provide a spectrum allocation for the introduction of satellite and terrestrial digital audio radio services (DARS). DARS should benefit the public by

providing higher quality, more interference resistance digital audio and ancillary services to American consumers.

C. Legal Basis

The proposed action is authorized by sections 4(i), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), 303(g), and 303(r). These provisions authorize the Commission to make such rules and regulations as may be necessary to encourage more effective use of radio in the public interest.

D. Description, Potential Impact, and Number of Small Entities Affected

This proposal may provide new opportunities for radio equipment manufacturers and suppliers of radio equipment, some of which may be small businesses, to develop and sell new equipment. Because this proposal concerns allocation of spectrum for new services, we are unable to quantify other potential effects on small entities. We invite comment on this matter by interested parties.

E. Reporting, Record Keeping and other Compliance Requirements

None.

F. Federal Rules which Overlap, Duplicate or Conflict with this Rule

None.

G. Significant Alternatives

This proposal will provide spectrum for new satellite and complementary terrestrial digital audio radio services. We are unaware of any alternatives that would provide the spectrum necessary to implement these services as contemplated. We solicit comment on this point.

Procedural Information

5. This action is taken pursuant to sections 4(i), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), and

6. The rule making proposals in this Notice constitute a nonrestricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).303(r).

7. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before January 29, 1993, and reply comments on or before March 1, 1993. All relevant and timely comments will be

considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

List of Subjects in 47 CFR Part 2

Frequency allocations and radio treaty matters; General rules and regulations, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92-29161 Filed 12-1-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-246; RM-8091]

Television Broadcasting Services; Ridgecrest, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission seeks comments on a petition for rule making filed by Valley Public Television, Inc., licensee of educational television Station KVPT, Channel *18, Fresno, California, requesting the substitution of Channel *41 for Channel *25 at Ridgecrest, which is reserved for noncommercial educational use, or alternatively, the placement of a site restriction on Channel *25 at Ridgecrest to accommodate Valley's application site for Channel *39 at Bakerfield. The proposed coordinates for Channel *41 at Ridgecrest are North Latitude 35-37-22 and West Longitude 117-40-29. The proposed coordinates for Channel *25 are North Latitude 35-38-58 and West Longitude 117-33-24.

DATES: Comments must be filed on or before December 28, 1992, and reply comments on or before January 12, 1993.

ADDRESSES: Federal Communications Commission, Washington DC 20554. In addition to filing comments with the

FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lonna M. Thompson, Esq. and Richard Hildreth, Esq., Fletcher, Heald & Hildreth 1225 Connecticut Avenue, NW., suite 400, Washington, DC 20036-2679 (Counsel for Valley Public Television, Inc.).

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Esq., Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-246, adopted October 5, 1992, and released November 5, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-29156 Filed 12-1-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 920783-2183]

Designated Critical Habitat; Snake River Sockeye Salmon, Snake River Spring/Summer Chinook Salmon, and Snake River Fall Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes to designate critical habitat for the Snake River sockeye salmon (*Oncorhynchus nerka*), Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) and Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) pursuant to the Endangered Species Act of 1973 (ESA). The proposed critical habitat for Snake River sockeye salmon is: Alturas, Pettit, Redfish, Stanley, and Yellow Belly Lakes (including their inlet and outlet creeks); Alturas Lake Creek, and Valley Creek; the Salmon River from Alturas Lake Creek to its confluence with the Snake River; the Snake River from its confluence with the Salmon River to its confluence with the Columbia River; the Columbia River from its confluence with the Snake River to the Pacific Ocean. The proposed critical habitat for Snake River spring/summer chinook salmon is: The Grande Ronde, Imnaha, Salmon, and Tucannon subbasins; Asotin, Granite, and Sheep Creeks; the Snake River from its confluence with Sheep Creek to its confluence with the Columbia River; the Columbia River from its confluence with the Snake River to the Pacific Ocean. The proposed critical habitat for Snake River fall chinook salmon is: The Snake River below Hells Canyon Dam; the lower reaches of the Clearwater, Grande Ronde, Imnaha, Salmon, and Tucannon Rivers; Asotin Creek; the Columbia River from its confluence with the Snake River to the Pacific Ocean. In addition, the physical and biological features of the habitat that are essential to the conservation of the species and that may require special management consideration or protection are discussed in the preamble to this proposed rule. The direct nation-wide economic and other impacts resulting from this proposed critical habitat designation are expected to be minimal. The designation of critical habitat provides explicit notice to Federal agencies and the public that these areas and features are essential to the conservation of the species.

DATES: Comments must be received on or before February 1, 1993. See **SUPPLEMENTARY INFORMATION** for times and dates of public hearings.

ADDRESSES: Comments should be addressed to the Office of Protected Resources, F/PR2, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, or provided at any one of the public hearings. See **SUPPLEMENTARY INFORMATION** for locations of public hearings.

FOR FURTHER INFORMATION CONTACT:

Garth Griffin, NMFS, Endangered Species Branch, Environmental and Technical Services Division, 911 NE 11th Avenue, room 620, Portland, OR 97232, Telephone (503) 230-5430, or Patricia Montanio, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, telephone (301) 713-2322.

SUPPLEMENTARY INFORMATION:**Background**

NMFS published its determination to list the Snake River sockeye salmon as endangered on November 20, 1991 (56 FR 58619), and Snake River spring/summer and fall chinook salmon as threatened on April 22, 1992 (57 FR 14653) under the ESA (16 U.S.C. 1531 *et seq.*). These fish have declined to a fraction of their historic abundance. Currently, Snake River sockeye salmon production occurs only in Redfish Lake. Snake River spring/summer chinook salmon are sparsely distributed throughout the Grande Ronde, Imnaha, Salmon, and Tucannon subbasins. Snake River fall chinook salmon production is primarily limited to the mainstem Snake River downstream of Hells Canyon Dam and the lower reaches of the Clearwater, Grande Ronde, Imnaha, Salmon, and Tucannon Rivers. All three species share the same migration route through the Snake and Columbia Rivers. Each species also resides, for a portion of its life, in the Pacific Ocean.

The geographic areas occupied by Snake River sockeye, spring/summer chinook, and fall chinook salmon throughout their life history overlap, and as a result, activities requiring special management considerations essential to the conservation of any one of these species could affect the conservation of the others. Therefore, to ensure that any designation of critical habitat is comprehensive and of optimum benefit to the complex of listed Snake River species, NMFS is designating critical habitat for all listed Snake River salmon species in a single proceeding.

Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, NMFS designate critical habitat concurrently with a determination that a species is endangered or threatened. At the time of the proposed listing determinations, critical habitat was not determinable because information necessary to perform the required analyses was not available. NMFS published Federal Register notices (October 15, 1991, 56 FR 51684) requesting biological and economic information on Snake River sockeye salmon and Snake River spring/

summer and fall chinook salmon. NMFS also convened a Biological Technical Committee and an Economic Technical Committee, comprised of concerned parties throughout the Pacific Northwest, to assure that available information on which to base any critical habitat determination is both accurate and complete. NMFS has considered all available scientific and economic information in making this proposal.

Definition of Critical Habitat

Critical habitat is defined in section 3(5) of the ESA as the specific areas within the geographical area occupied by the species on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection; and specific areas outside the geographical area occupied by the species upon a determination by the Secretary that such areas are essential for the conservation of the species.

Areas outside the species' current range can be designated only if a designation limited to the species' present distribution would be inadequate to ensure the conservation of the species. The term conservation, as defined in section 3(3) of the ESA, means to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.

The criteria to be considered in designating critical habitat are specified under 50 CFR 424.12. NMFS considered the requirements of the species, including: (1) Space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, or rearing of offspring; and, generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

In addition, NMFS focused on and listed the known physical and biological features (primary constituent elements) within the designated area(s) that are essential to the conservation of the species and that may require special management considerations or protection. These essential features may include, but are not limited to, spawning sites, food resources, water quality and quantity, and riparian vegetation.

Consideration of Economic, Environmental, and Other Factors

The economic, environmental, and other impacts of a critical habitat designation were considered and

evaluated. NMFS identified present and anticipated activities that may adversely modify the area(s) being considered, or be affected by a designation. An area may be excluded from a critical habitat designation if NMFS determines that the overall benefits of exclusion outweigh the benefits of designation, unless the exclusion will result in the extinction of the species.

The impacts considered in this analysis are only those incremental impacts specifically resulting from a critical habitat designation, above the economic and other impacts attributable to listing the species or resulting from other authorities. Since listing a species under the ESA provides significant protection to the species' habitat, in many cases, the direct nation-wide economic and other impacts resulting from the critical habitat designation, over and above the impacts of the listing itself, are minimal (see Significance of Designating Critical Habitat section of this preamble). In general, the designation of critical habitat highlights geographical areas of concern and reinforces the substantive protection resulting from the listing itself.

Impacts attributable to listing include those resulting from the taking prohibitions under section 9 of the ESA and associated regulations. "Taking" as defined in the ESA means to harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Harm can occur through destruction or modification of habitat (whether or not designated as critical) that significantly impairs essential behaviors, including breeding, feeding, rearing or migration. Impacts attributable to listing also result from the duty of Federal agencies under section 7 to ensure that their actions are not likely to jeopardize endangered or threatened species.

Significance of Designating Critical Habitat

The designation of critical habitat does not, in itself, restrict human activities within the area or mandate any specific management or recovery action. A critical habitat designation contributes to species conservation primarily by identifying critically important areas and by describing the features within those areas that are essential to the species, thus alerting public and private entities to the area's importance. Under the ESA, the only regulatory impact of a critical habitat designation is through the provisions of section 7. Section 7 applies only to actions with Federal involvement (e.g., authorized, funded, conducted), and

does not affect exclusively state or private activities.

Under the section 7 provisions, a designation of critical habitat would require Federal agencies to ensure that any action they authorize, fund or carry out is not likely to destroy or adversely modify designated critical habitat. Activities that adversely modify critical habitat are defined as those actions that "appreciably diminish the value of critical habitat for both the survival and recovery" of the species (50 CFR 402.02). Regardless of a critical habitat designation, Federal agencies must ensure that their actions are not likely to jeopardize the continued existence of the listed species. Activities that jeopardize a species are defined as those actions that "reasonable would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery" of the species (50 CFR 402.02). Using these definitions, activities that destroy or adversely modify critical habitat may also be likely to jeopardize the species. Therefore, the protection provided by a critical habitat designation generally duplicates the protection provided under the section 7 jeopardy provision. Critical habitat may provide additional benefits to a species in cases where areas outside the species' current range have been designated. When actions may affect these areas, Federal agencies are required to consult with NMFS under section 7, which may not have been recognized but for the critical habitat designation.

A designation of critical habitat provides a clear indication to Federal agencies as to when section 7 consultation is required, particularly in cases where the action would not result in direct mortality, injury, or harm to individuals of a listed species (e.g., an action occurring within the critical area when a migratory species is not present). The critical habitat designation, describing the essential features of the habitat, also assists in determining which activities conducted outside the designated area are subject to section 7 (i.e., activities that may affect essential features of the designated area).

A critical habitat designation will also assist Federal agencies in planning future actions, since the designation establishes, in advance, those habitats that will be given special consideration in section 7 consultations. With a designation of critical habitat, potential conflicts between Federal actions and endangered or threatened species can be identified and possibly avoided early in the agency's planning process.

Another indirect benefit of a critical habitat designation is that it helps focus Federal, state and private conservation and management efforts in those areas. Management efforts may address special considerations needed in critical habitat areas, including conservation regulations to restrict private as well as Federal activities. The economic and other impacts of these actions would be considered at the time of those proposed regulations, and therefore, are not considered in the critical habitat designation process. Other Federal, state and local authorities, such as zoning or wetlands and riparian lands protection, may also provide special protection for critical habitat areas.

Process for Designating Critical Habitat

In summary, developing a proposed critical habitat designation involves three main considerations. First, the biological needs of the species are evaluated and essential habitat areas and features identified. If there are alternative areas that would provide for the conservation of the species, these alternatives are also identified. Second, the need for special management considerations or protection of the area(s) or features are evaluated. Finally, the probable economic and other impacts of designating these essential areas as "critical habitat" are evaluated. After considering the requirements of the species, the need for special management, and the impacts of the designation, the proposed critical habitat is published in the *Federal Register* for comment. The final critical habitat designation, considering comments on the proposal and impacts assessment, is published within 1 year of the proposed rule. Final critical habitat designations may be revised, using the same process, as new information becomes available.

A description of the essential habitat, need for special management, impacts of designating critical habitat, and the proposed action are described in the following sections for Snake River sockeye, spring/summer chinook, and fall chinook salmon.

Essential Habitat of Snake River Sockeye, Spring/Summer Chinook, and Fall Chinook Salmon

Available biological information for listed Snake River salmon can be found in each species' Status Review (Matthews and Waples 1991, Waples *et al.* 1991a, Waples *et al.* 1991b), and in *Federal Register* notices of proposed listing determinations (sockeye salmon, April 5, 1991, 56 FR 14055; spring/summer chinook salmon, June 27, 1991, 56 FR 29542; fall chinook salmon, June

27, 1991, 56 FR 29547). Listed Snake River salmon habitat consists of four components: (1) Spawning and juvenile rearing areas; (2) juvenile migration corridors; (3) areas for growth and development to adulthood; and (4) adult migration corridors. The Pacific Ocean areas used by listed salmon for growth and development to adulthood are not well understood, and essential areas and features have not been identified.

Snake River sockeye salmon spawning and rearing is currently limited to Redfish Lake. Other historical nursery areas that are essential to the conservation of the species include Alturas, Pettit, Stanley, and Yellow Belly Lakes (including their inlet creeks). Essential features of these areas include adequate: (1) Substrate; (2) water quality; (3) water quantity; (4) water temperature; (5) food; (6) riparian vegetation; and (7) access. These fishes' juvenile migration corridors include these lakes' inlet and outlet creeks, Alturas Lake Creek and Valley Creek, the main fork of the Salmon River, the Snake River, and the Columbia River to the Pacific Ocean. Essential features of the juvenile migration corridors include adequate: (1) Substrate; (2) water quality; (3) water quantity; (4) water temperature; (5) water velocity; (6) cover/shelter; (7) food; (8) riparian vegetation; (9) space; and (10) safe passage conditions. The adult migration corridors are the same areas included in juvenile migration corridors. Essential features would include those in the juvenile migration corridors, excluding adequate food.

Snake River spring/summer chinook salmon spawning and rearing is currently sparsely distributed throughout the Grande Ronde, Imnaha, Salmon, and Tucannon subbasins, and Asotin, Granite, and Sheep Creeks. No areas outside of the species' current range are essential for their conservation. Essential features of spawning and juvenile rearing areas include adequate: (1) Substrate; (2) water quality; (3) water quantity; (4) water temperature; (5) cover/shelter; (6) food; (7) riparian vegetation; and (8) space. These fishes' migration corridors are the spawning and juvenile rearing areas, plus the Snake River, and the Columbia River to the Pacific Ocean. Essential features of the juvenile and adult migration corridors are the same as those listed for Snake River sockeye salmon.

Snake River fall chinook salmon spawning and rearing is currently limited to the Snake River below Hells Canyon Dam, and within the lower reaches of the Clearwater, Grand Ronde, Imnaha, Salmon, and Tucannon Rivers,

and Asotin Creek. No areas outside of the species' current range are essential for their conservation. Essential features of spawning and juvenile rearing areas are the same as for Snake River spring/summer chinook salmon. Juvenile and adult migration corridors are the same areas as spawning and juvenile rearing areas, plus the Columbia River to the Pacific Ocean. Essential features of the juvenile and adult migration corridors are the same as those listed for Snake River sockeye salmon.

Need for Special Management Considerations or Protection

In order to assure that the essential areas and features are maintained or restored, special management may be needed. Activities that may require special management considerations for listed Snake River salmon spawning and juvenile rearing areas include, but are not limited to: (1) Artificial propagation; (2) land management; (3) timber harvest; (4) water pollution; (5) livestock grazing; (6) habitat restoration; (7) irrigation withdrawal; (8) mining; and (9) road construction. For juvenile and adult migration corridors, special management considerations also include: (10) Migration barriers; (11) hydrosystem operation; (12) water storage; (13) dredging and dredge material disposal and placement of fill material; and (14) predator control. Not all these activities are necessarily of current concern; however, they indicate the potential types of activities that will require consultation in the future. For listed Snake River salmon in the ocean environment, no special management consideration of the ocean habitat have been identified.

Activities That May Affect the Essential Habitat

A wide range of activities may affect the essential habitat requirement of listed Snake River salmon (ETSD 1991a, 1991b). These activities include: Water management actions of Federal agencies (i.e., Bonneville Power Administration, U.S. Army Corps of Engineers, and the U.S. Bureau of Reclamation) and related or similar actions of other Federally regulated project operators (e.g., Idaho Power Company) in the Columbia River system; irrigation withdrawals in the Salmon River Basin permitted by the U.S. Bureau of Reclamation; livestock grazing allocations in the Snake River Basin by the U.S. Forest Service and U.S. Bureau of Land Management; timber sales in the Snake River Basin conducted by the U.S. Forest Service and the U.S. Bureau of Land Management; and planting anadromous salmonids and other fishes in the

Columbia River Basin by the U.S. Fish and Wildlife Service, the States of Oregon, Washington, and Idaho, and Indian Tribes. Other actions of concern include dredging and dredge material disposal and placement of fill material, and bank stabilization activities authorized and/or conducted by the U.S. Army Corps of Engineers throughout the Columbia River Basin.

The Federal agencies that most likely will be affected by this critical habitat designation include the Bonneville Power Administration, U.S. Army Corps of Engineers, U.S. Bureau of Land Management, U.S. Bureau of Reclamation, U.S. Fish and Wildlife Service, and the U.S. Forest Service. This designation will provide clear notification to these agencies, private entities, and the public of critical habitat designated for listed Snake River salmon and the boundaries of the habitat and protection provided for that habitat by the section 7 consultation process. This designation will also assist these agencies and others in evaluating the potential effects of their activities on listed Snake River salmon and their critical habitat, and in determining when consultation with NMFS would be appropriate.

Expected Impacts of Designating Critical Habitat

NMFS prepared an Environmental Assessment (EA) that describes the environmental and economic impacts of alternative critical habitat designations. The EA is based on the best available information, considering comments received in response to the **Federal Register** notice soliciting biological and economic information on critical habitat (October 15, 1991, 56 FR 51684).

The environmental benefit provided by designating critical habitat is the clear notification to Federal agencies and the public of the existence and importance of critical habitat. This proposed critical habitat identifies areas in the Columbia River Basin determined to be essential to the conservation of listed Snake River salmon and that may be in need of special management considerations or protection. Designation of critical habitat will have little direct impact on the water, air, or land or on the cultural or historical resources of the Columbia River Basin.

The University of Washington conducted a study under a grant from NMFS to project the economic costs and benefits resulting from specific management measures within areas potentially qualifying as critical habitat. This report provides information useful for the purposes of recovery planning, as well as critical habitat designation.

Assistance in the development of this report was solicited from the public (October 15, 1992, 56 FR 51684) and from an Economic Technical Committee comprised of entities throughout the Pacific Northwest. The resulting report presented to NMFS (Huppert *et al.* 1992) provided a broad scope of potential management measures and projected economic effects ranging between \$5.6 and 249 million annually, from which NMFS could partition the incremental costs attributable to a critical habitat proposal.

The economic costs to be considered in a critical habitat designation are the incremental costs of critical habitat designation above the economic impacts attributable to listing or attributable to authorities other than ESA (see Consideration of Economic, Environmental and Other Factors section of this preamble). NMFS has determined that there are no incremental net costs for areas within these species' current distribution. However, incremental costs do result from special management activities in areas outside the current distribution of the listed species that have been determined to be essential to the conservation of the species. For Snake River sockeye, only those impacts from special management activities in Alturas, Pettit, Stanley, and Yellow Belly Lakes and their inlet and outlet creeks (areas previously within the range of the species) are directly attributable to a critical habitat designation. Critical habitat designation of these areas may result in an estimated, one-time nation-wide economic impact of \$1.0 to 1.5 million, and estimated annual impacts ranging from \$66,618 to \$183,625 (Fluharty *et al.*, 1992). These estimated economic impacts may result from activities such as: Treating and buffering (one-time cost) sockeye salmon nursery lakes; providing access for juvenile and adult sockeye salmon to and from the nursery lakes; and eliminating potential competition and predation due to planted put-take salmonids. It should be noted that these costs will not be incurred immediately, and, since activities may not need to be conducted in all lakes simultaneously, the costs may be spread out over time. Plans for the timing of the needed habitat improvements will be developed through the recovery planning process, considering such factors as the current condition of the habitat, the time necessary for habitat improvements, and the plans for outplanting of smolts from the captive broodstock program or other sources.

A beneficial economic and social impact may also be realized from designating these areas as critical habitat from the establishment of a Tribal ceremonial and subsistence fishery upon the recovery of the sockeye. Moreover, it is estimated that a beneficial economic impact ranging from approximately \$6,000 to \$305,000 per year may be realized from an increase in non-consumptive uses (i.e., viewing sockeye spawning) upon the recovery of the Snake River sockeye salmon in the Stanley Basin (Fluharty *et al.*, 1992).

Proposed Critical Habitat; Essential Features

Proposed critical habitat for all listed Snake River salmon includes: Alturas, Pettit, Redfish, Stanley, and Yellow Belly Lakes (including their inlet and outlet creeks); Alturas Lake Creek and Valley Creek; the Grande Ronde, Imnaha, Salmon, and Tucannon subbasins; the lower reach of the Clearwater River; Asotin, Granite, and Sheep Creeks; the Snake River from Hells Canyon Dam to its confluence with the Columbia River; the Columbia River below its confluence with the Snake River to the Pacific Ocean. Critical habitat includes the bottom and water of the waterways and adjacent riparian zone. The riparian zone includes those areas belonging or relating to the bank of the river, stream, lake, or pond and those areas of or on the bank, including the flood plain of the body of water. Essential features of these areas include adequate: (1) Substrate; (2) water quality; (3) water quantity; (4) water temperature; (5) water velocity; (6) cover/shelter; (7) food; (8) riparian vegetation; (9) space; and (10) migration conditions.

NMFS considered including Pacific Ocean habitat in the proposed Snake River salmon critical habitat designation. To be considered critical habitat, the area must contain those features that are essential to the conservation of the species and that may require special management considerations. However, little is known about the distribution of salmon during their stay in the ocean. For Snake River salmon in particular, no special features or areas of the ocean habitat have been identified as essential for their conservation. Further, the need for special management considerations of the ocean habitat has not been identified. The only known human activity significantly affecting ocean survival of the listed species is harvest. However, while harvest affects the listed species by capturing and killing individuals, it is not known to affect

significantly the *habitat* of the fish. Federally regulated harvest activities are subject to the section 7 consultation provisions, and all harvest activities are subject to the taking prohibitions established under the ESA. Since no special areas, features or need for special management have been identified, designation of the entire Pacific Ocean would not provide any benefit to the listed species, and would result in unnecessary, additional section 7 consultations. For these reasons and based on the best available information, NMFS has determined that the Pacific Ocean does not qualify as critical habitat. NMFS will continue to monitor the ocean phase of the salmon's life history in an effort to identify areas that may be in need of special management. Should new information become available, critical habitat designation may be revised following the same procedures as the original designation.

Public Comments Solicited

NMFS is soliciting information, comments or recommendations on any aspect of this proposal from all concerned parties. NMFS will consider all information, comments and recommendations received before reaching a final decision. Public hearing dates have also been established (see **DATES and ADDRESSES**).

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The regulations are not likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce has certified that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as described in the Regulatory Flexibility Act. NMFS completed an assessment of the economic impacts of designating critical habitat. NMFS found that since listing species under the ESA provides significant protection to the species habitat, the direct economic and other impacts resulting from critical habitat designation are

minimal. Therefore, a regulatory flexibility analysis is not required.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Assistant Administrator has determined that the proposed designation is consistent to the maximum extent practicable with the approved Coastal Zone Management Programs of the states of Oregon and Washington. This determination has been submitted for review by the responsible state agencies under section 3.7 of the Coastal Zone Management Act.

NOAA Administrative Order 216-6 states that critical habitat designations under the ESA, generally, are categorically excluded from the requirement to prepare an EA or an environmental impact statement. However, in order to evaluate more clearly the impacts of the proposed critical habitat designation, NMFS has prepared an EA. Copies of the EA and critical habitat maps are available on request (see **FOR FURTHER INFORMATION CONTACT**).

The public hearings will begin at 7 p.m. and will end at 9:30 p.m. The hearings are scheduled as follows:

Monday, January 11, 1993

Federal Complex Auditorium, 911 NE 11th Avenue, Portland, Oregon (1st floor—rear entrance on 9th street)

Tuesday, January 12, 1993

Richland Federal Building Auditorium, 825 Jadwin Avenue, Richland, Washington

Wednesday, January 13, 1993

City Community Building, 1424 Main, Lewiston, Idaho

Thursday, January 14, 1993

Boise Interagency Fire Center Auditorium, 3905 Vista Avenue, Boise, Idaho

References

Huppert, Daniel D., David L. Fluharty, and Elizabeth S. Kenney. 1992. Economic Effects of Management Measures Within The Range of Potential Critical Habitat For Snake River Endangered and Threatened Salmon Species. Grant # R/MS-40, Washington Sea Grant College Program.

Environmental and Technical Services Division. 1991a. Factors for decline. A supplement to the notice of determination for Snake River spring/summer chinook salmon

under the Endangered Species Act. NMFS, Environmental and Technical Services Division, 911 NE 11th Ave., room 620, Portland, Ore. June, 1991.

Environmental and Technical Services Division. 1991b. Factors for decline. A supplement to the notice of determination for Snake River fall chinook salmon under the Endangered Species Act. NMFS, Environmental and Technical Services Division, 911 NE 11th Ave., room 620, Portland, Ore. June, 1991.

Fluharty, D., D. Huppert, and E. Kenney. 1992. Economics of critical habitat designation: Request for economic information on habitat designation measures. Unpubl. manuscript, 9 p. School of Marine Affairs, Univ. of Wash. Seattle, WA 98195.

Matthews G.M. and R.S. Waples. 1991. Status Review for Snake River Spring and Summer Chinook Salmon. U.S. Dep. Comm., NOAA Tech. Memo. NMFS F/NWC-200.

Waples, R.S., R.P. Jones, B.R. Beckman, and G.A. Swan. 1991a. Status Review for Snake River Fall Chinook Salmon. U.S. Dep. Comm. NOAA Tech. Memo. NMFS F/NWC-201.

Waples, R.S., O.W. Johnson, and R.P. Jones. 1991b. Status review for Snake River Sockeye Salmon. U.S. Dept. of Comm. NOAA Tech. Memo. NMFS F/NWC-195.

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: November 24, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

For the reasons set forth in the preamble, 50 CFR part 226 is proposed to be amended as follows:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. A new § 226.22 is added to subpart C to read as follows:

§ 226.22 Snake River Sockeye Salmon (*Oncorhynchus nerka*), Snake River Spring/Summer Chinook Salmon (*Oncorhynchus tshawytscha*), Snake River Fall Chinook Salmon (*Oncorhynchus tshawytscha*).

The following waterways (rivers, streams, lakes, and ponds) include the

water, waterway bottom and adjacent riparian zone. Perennial rivers and creeks within the defined areas are also included in the critical habitat designation (but are not specifically named), unless otherwise noted.

(a) *The Columbia River—Oregon.* Beginning at a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) and including all Columbia River estuarine and riverine areas inland of that line that border and/or pass through: Clatsop County and continuing inland through Columbia County, Multnomah County, Hood River County, Wasco County, Sherman County, Gilliam County, Morrow County, and Umatilla County up to the Oregon/Washington border.

(b) *The Columbia River—Washington.* Beginning at a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) and including all Columbia River estuarine and riverine areas inland of that line that border and/or pass through: Pacific County, Wahkiakum County, Cowlitz County, Clark County, Skamania County, Klickitat County, and Benton County to the confluence of the Snake River.

(c) *The Snake River—Oregon.* Beginning at the Oregon, Washington and Idaho border and proceeding upstream, all river reaches passing through or bordering on Wallowa County, Baker County and Malheur County up to the downstream face of Hells Canyon Dam.

(d) *The Snake River—Washington.* Beginning at the confluence of the Snake and Columbia Rivers and proceeding upstream, all river reaches bordering on or passing through: Walla County, Franklin County, Columbia County, Whitman County, Garfield County, and Asotin County up to the Washington and Idaho border.

(e) *The Snake River—Idaho.* Beginning at the Washington and Idaho

border and proceeding upstream, all river reaches passing through or bordering on: Nez Perce County, Idaho County, and Adams County to the downstream face of Hells Canyon Dam.

(f) *The Clearwater River—Idaho.* Beginning at the confluence of the Snake River and proceeding upstream, the lower reach of the Clearwater River passing through Nez Perce County, Lewis County, and Clearwater County. This includes only the mainstem river and not any perennial streams or tributaries.

(g) *The Salmon River—Idaho.* Beginning at the confluence of the Snake River and proceeding upstream, all river reaches bordering on or passing through: Nez Perce County, Lewis County, Idaho County, Adams County, Valley County, Lemhi County, Custer County, and Blaine County up to its headwaters.

(h) *The Grande Ronde River—Oregon.* Beginning at the Oregon/Washington state border and proceeding upstream, all river reaches bordering on or passing through: Wallowa County, Union County, and Umatilla County, up to its headwaters.

(i) *The Grande Ronde River—Washington.* Beginning at the confluence of the Snake River and proceeding upstream, all river reaches bordering on or passing through Asotin County up to the Washington/Oregon border.

(j) *Imnáha River—Oregon.* Beginning at the confluence of the Snake River and proceeding upstream, all river reaches bordering on or passing through Wallowa County and Baker County up to its headwaters.

(k) *Tucannon River—Washington.* Beginning at the confluence of the Snake River and proceeding upstream, all river reaches bordering on or passing through Columbia County and Garfield County up to its headwaters.

[FR Doc. 92-29066 Filed 12-1-92; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 57, No. 232

Wednesday, December 2, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Exploration, Development, and Production of Geothermal Power Within the Bonneville Power Administration Geothermal Pilot Program, Deschutes National Forest, Deschutes County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will be the lead agency for the preparation of an environmental impact statement (EIS) for: The drilling of 4 temperature gradient wells and 14 exploration production test wells to define a 100 megawatt geothermal reservoir reserve; the drilling and completion of production wells at successful exploration locations; and the construction and operation of a 30 megawatt power plant and accompanying facilities, including connecting pipelines and an electric transmission line, on Federal geothermal leases within the Deschutes National Forest.

This EIS is being prepared pursuant to a Memorandum of Understanding (November, 1992) between the USDA Forest Service, USDI Bureau of Land Management (BLM), and USDE Bonneville Power Administration (BPA). Each agency will prepare their individual Record of Decision (ROD) based on the analysis in the EIS. In their respective RODs: Forest Service will decide whether to approve the Plan of Operations and the Plan of Utilization for surface activities; BLM will decide whether to approve the Plan of Operations and the Plan of Utilization for subsurface activities; and BPA will decide whether to purchase and distribute electrical power from the project.

The EIS will analyze and support decisions on several separate Federal actions, including:

1. BLM and Forest Service approval of a Plan of Operations for the exploration, development, and production phases of the project;
2. BLM issuance of individual Geothermal Drill Permits under 43 CFR 3260;
3. Forest Service issuance of a Special Use permit for surface occupancy, including access and other related activities occurring within the lease area as well as outside the lease boundary;
4. BLM and Forest Service approval of a Plan of Utilization and Disposal for the project under 43 CFR 3262.4-1, including construction of a 30-megawatt geothermal generating facility and construction of associated pipelines and transmission lines;
5. BLM issuance of a two-part Geothermal Utilization Permit under 43 CFR 3264.2-1;
6. BLM approval of a Site License under 43 CFR 3250.1-1;
7. BPA execution of a contract to transmit power from the project to Eugene Water and Electric Board;
8. BPA power purchase contract with California Energy Company;
9. BPA billing credit agreement with Eugene Water and Electric Board.

Because the proposal occurs on lands administered by the Forest Service subject to the Newberry National Volcanic Monument Act, Public Law (P.L.) 101-522, November 5, 1990, 104 Stat. 2288, the Forest Service, BLM, and BPA agree that the Forest Service shall be the lead agency for the preparation of the EIS, and that BLM and BPA are cooperating agencies for this project.

The Forest Service invites written comments and suggestions on the proposal for geothermal exploration and development, and on the scope of the analysis. The agency gives notice of the full environmental analysis and decision making process that will occur for this plan so that interested and affected people are aware of how they may participate and contribute to the final decision. Open houses on the issues relevant to the proposal will be held in Bend, Sunriver, La Pine, Eugene, and Portland, Oregon, during January, February, or March, 1993. Actual dates, times and places will be announced, at a minimum, in The Bend Bulletin, The Eugene Register-Guard, and The Oregonian.

DATES: Comments concerning the scope and implementation of this proposal must be received by 30 days after this notice appears in the Federal Register.

ADDRESSES: Submit written comments concerning the scope of the analysis to: Carolyn Wisdom, Special Projects Coordinator, Fort Rock Ranger District, 1230 NE 3rd Street, Bend, Oregon 97701; (phone (503) 383-4702).

FOR FURTHER INFORMATION CONTACT:

Questions and written comments about the proposed action should be directed to: Carolyn Wisdom, Special Projects Coordinator, Fort Rock Ranger District, 1230 NE 3rd Street, Bend, Oregon 97701, (phone (503) 383-4702).

SUPPLEMENTARY INFORMATION: The Northwest Power Planning Council has determined that conservation and renewable energy resources need to be a top priority for the 1990's, and that alternative sources of energy need to be pursued. Geothermal energy is identified as a potential resource to meet the energy demand for the future, and the Northwest Power Planning Council called for a series of "pilot projects" to determine the availability and development potential of geothermal resources in the region. To meet this objective, BPA initiated a program to encourage development of new geothermal resources in the northwest.

California Energy Company and Eugene Water and Electric Board have submitted a proposal to BPA for development of geothermal power in the Newberry Known Geothermal Resource Area, under the terms of the BPA Geothermal Pilot Program. Their proposal includes exploration, development, production, construction, and operation of well pads and a 30-megawatt geothermal generating facility. Electrical power would be delivered by 115-kilovolt transmission line, approximately 8 miles from the plant to the BPA system at the substation in La Pine, Oregon.

The proposal area is located approximately 25 miles southeast of Bend, Oregon, on Deschutes National Forest lands managed as "general forest land", as described in the 1990 Deschutes National Forest Land Management Plan. A Federal geothermal unit area (Deschutes Unit Area) has been approved by the BLM, and the proposal is within this Unit. The proposal area is adjacent to the western

boundary of the Newberry National Volcanic Monument, established November 5, 1990 by Public Law 101-522, and includes the Newberry Special Management Area "no surface occupancy" lease area.

The legislation establishing the Newberry National Volcanic Monument recognizes the geothermal development potential of the area outside the monument boundary, and geothermal leases were issued pursuant to the legislation. This geothermal proposal is within leases identified in the legislation.

Preliminary issues include: Air quality; visual and scenic quality; cultural and archaeological resources; vegetation, wildlife, and fisheries resources; noise; aquatic and hydrologic resources; subsurface geothermal resources; hazardous materials and by-products; intrusion into an unroaded area; and social and economic impacts to Deschutes County. Because of its proximity to the Newberry National Volcanic Monument, potential effects on the Monument's environment are also considered as preliminary issues.

Appropriate Federal, state, and local permits or licenses will be obtained for activities associated with the project, including: BLM individual geothermal drill permits; Forest Service special-use permits for surface occupancy; BLM geothermal utilization permit; and a site license.

Public input, as well as Forest Service, BLM, and BPA concerns and management requirements, will determine a full range of alternatives to the proposed action. Alternatives may include alternate drill sites, power plant locations, road access, and transmission routes. The effects of these alternatives, the Proposed Action and the No Action alternative will be analyzed.

The Forest Service is seeking input from individuals, organizations, local and state agencies, and Federal agencies who may be interested in or affected by the Proposal.

Scoping is a method for identifying relevant and significant issues related to the Proposed Action. Public participation will be especially important during the scoping process (40 CFR 1501.7).

Public meetings and open houses will be scheduled periodically during the preparation of the draft EIS. Meetings will be announced through mailings and through notices in *The Bend Bulletin*, *The Eugene Register-Guard*, and *The Oregonian*.

A mailing list is being compiled for the project. Interested individuals and agencies may have their names added to this list at any time by submitting a

request to: Carolyn Wisdom, Special Projects Coordinator, For Rock Ranger District, Deschutes National Forest, 1230 NE 3rd Street, Bend, Oregon 97701. (Phone (503) 383-4702).

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by December, 1993. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA Notice of Availability appears in the **Federal Register**. It is important that those interested in potential geothermal exploration and development at Newberry Volcano participate at that time.

The Forest Service believes that at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986), and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338. (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the Proposed Action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

This responsible official is the Deschutes National Forest Supervisor, who will decide which, if any, of the Proposed Action or Alternatives for surface activity will be implemented. The final EIS is scheduled to be completed by the spring of 1994. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. The decisions and reasons for the decisions will be documented in the Records of Decision, and will be subject to Appeal Regulations of the Forest Service (36 CFR 217) and the Bureau of Land Management (40 CFR 4.400).

Dated: November 16, 1992.

Sally D. Collins,

Deputy Forest Supervisor.

[FR Doc. 92-29212 Filed 12-1-92; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Colorado Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission will be held from 1 p.m. until 3 p.m. on Tuesday, December 15, 1992, in the 4th floor conference room of the Mile High Center, 1700 Broadway, Denver, CO 80290. The purpose of this meeting is to discuss current civil rights issues and review the Committee's present project.

Persons desiring additional information should contact Committee Chairperson, Gwen Thomas, or William F. Muldrow, Director of the Rocky Mountain Regional Division, (303) 866-1040 (TDD 303-866-1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 16, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92-29153 Filed 12-1-92; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting of the Montana Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Montana Advisory Committee to the Commission will be held from 1 p.m. until 3:30 p.m. on Thursday, December 17, 1992, at the Best Western Heritage Inn, 1700 Fox Farm Road, Great Falls, Montana 59404. The purpose of the meeting is to discuss current issues, review the Committee's current project and plan future activities.

Persons desiring additional information should contact Committee Chairperson, Donald Dupuis, or William F. Muldrow, Director of the Rocky Mountain Regional Division, (303) 866-1040 (TDD 303-866-1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 17, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92-29154 Filed 12-1-92; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting of the South Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 2 p.m. and adjourn at 5 p.m. on Friday, December 18, 1992, at the Residence Inn, 150 Stoneridge Drive, Columbia, South Carolina 29210. The purpose of the meeting is to: (1) To discuss the status of the Commission and SACs; (2) to discuss civil rights progress and/or problems in the State; (3) to update the current project, Racial Tension in South Carolina; and (4) to review and discuss the three meeting transcripts on racial tensions.

Persons desiring additional information, or planning a presentation to the Committee should contact Bobby D. Doctor, Regional Director, Southern Regional Office of the U.S. Commission on Civil Rights at (404/730-2476, TDD 404/730-2481). Hearing impaired persons who will attend the meeting

and require the services of a sign language interpreter should contact the Southern Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 19, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92-29155 Filed 12-1-92; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation - 1991 Panel Wave 8.

Form Number(s): SIPP-11800, SIPP-11803, SIPP-11804, 11805(L).

Agency Approval Number: 0607-0702.

Type of Request: Revision of a currently approved collection.

Burden: 44,100 hours.

Number of Respondents: 29,400.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Bureau of the Census conducts the Survey of Income and Program Participation (SIPP) to gather data concerning the distribution of income received directly as money or indirectly as in-kind benefits and to measure the effect of tax and transfer programs on this distribution. The SIPP provides these kinds of data on a continuing basis so that levels of economic well-being and changes in these levels can be measured over time. Economic policymakers, the Congress, state and local governments, and Federal agencies that administer social welfare or transfer payment programs use SIPP data to support policy and program planning.

The SIPP is designed as a continuing series of national panels of interviewed households which are introduced annually with each panel having a duration of about 2½ years in the survey. The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The core is periodically supplemented with questions designed to answer specific needs. These supplemental questions

are included with the core and are referred to as "topical modules."

The topical modules for the 1991 Panel Wave 8 collectively are called the "Annual Round-up" topical module. The individual components are: 1) Annual Income and Retirement Accounts, 2) Taxes, and 3) School Enrollment and Financing. We will conduct Wave 8 interviews from June through September 1993.

Affected Public: Individuals or households.

Frequency: Once during the panel.

Respondent's Obligation: Voluntary

OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 25, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92-29194 Filed 12-1-92; 8:45 am]

BILLING CODE 3510-07-F

National Oceanic and Atmospheric Administration

Intent To Conduct Public Meetings on Sites Being Considered for Nomination as Components to the Chesapeake Bay National Estuarine Research Reserve in Virginia (CBNERR-VA)

AGENCY: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Public meeting notice.

SUMMARY: Notice is hereby given that the Virginia Institute of Marine Science (VIMS) of the College of William and Mary, of the Commonwealth of Virginia, intends to conduct public meetings to discuss the proposed nomination of sites as components in the Chesapeake Bay National Estuarine Research Reserve in Virginia (CBNERR-MD). These public meetings are being held for the purpose of soliciting comments about the following sites in the Potomac River estuary: Kanes Creek and Great Marsh (Fairfax County), representing the

tidal freshwater zone; Chotank Creek and Caledon Creek (King George County), representing the transition zone; and Popes Creek and Bridges Creek (Westmoreland County), representing the lower estuary zone.

VIMS will complete a site nomination package and submit it to NOAA which administers the National Estuarine Research Reserve System. An environmental impact statement and draft management plan will be prepared for those nominated sites receiving NOAA approval. The Commonwealth is identifying estuarine areas in an effort to expand a multi-site system for research and education which adequately represents the major estuarine characteristics of the Chesapeake Bay and its tributaries. Sites ultimately designated as components of the CBNERR-VA will be used to study the Chesapeake Bay estuarine ecosystem, as well as by schools and the general public for learning about estuarine ecology and related issues. Site selection criteria are based on ecological representativeness, value for research and education and practical management considerations.

The public meetings will be held at the following times and places:

Tuesday, December 15, 1992 at 7 p.m.—
American Legion Post 148, Colonial Avenue,
Colonial Beach, Virginia.

Thursday, December 17, 1992 at 7 p.m.—
Gunston Elementary School, 10100 Gunston
Road, Lorton, Virginia.

BACKGROUND: The Commonwealth and NOAA have established the CBNERR-VA to provide natural coastal habitats as field laboratories for baseline ecological studies and education programs. Research and monitoring programs are designed to enhance basic scientific understanding of coastal environments and aid in resource management decision-making in Tidewater Virginia. Information derived from sponsored studies will provide a basis for measuring progress in Chesapeake Bay clean-up efforts and will be used to increase public awareness of coastal issues. VIMS has the lead role in developing and managing the reserve system.

The first four sites in the CBNERR-VA were designated in 1991 and are located in the York River. VIMS has conducted an evaluation of thirty-nine (39) possible sites in the Potomac and Rappahannock Rivers to be considered for inclusion in the CBNERR-VA. Sites were evaluated on the basis of their ecological value, lack of disturbance, importance to research and environmental education, and the Commonwealth's ability to protect and manage the site.

All interested individuals are encouraged to attend the public meetings. Invited speakers include representatives of VIMS, the Council on the Environment and NOAA. Speakers will describe the importance of the program and the opportunities for local involvement in reserve operations and management. Public comments from the public will be invited.

An information packet on the CBNERR-VA and the proposed site will be available at the public meetings. Individuals wishing to comment on the proposed sites will be asked to sign up prior to the beginning of the meeting. It is recommended that members of the public limit their presentations to 3-5 minutes in length.

FOR FURTHER INFORMATION CONTACT:
Cheryl A. Graham, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1825 Connecticut Avenue, NW., suite 714, Washington, DC 20235 (202) 606-4122.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Estuarine Sanctuaries.

Dated: November 25, 1992.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 92-29173 Filed 12-1-92; 8:45 am]

BILLING CODE 3510-08-M

National Technical Information Service NTIS Advisory Board; Meeting

AGENCY: National Technical Information Service, Technology Administration, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Technical Information Service Advisory Board will meet Thursday, December 14, 1992, from 9 a.m. to 4:30 p.m. and on Friday, December 15, 1992, from 9 a.m. to 4 p.m. The NTIS Advisory Board is composed of five members appointed by the Secretary of Commerce who are eminent in such fields as information resources management, information technology, and library and information services. The purpose of this meeting is to review and make recommendations regarding general policies and operations of NTIS, including policies in connection with fees and charges for its services. The agenda will include presentations on NTIS modernization and reorganization, a review of fiscal data and performance

measures, an update on the proposed new facility, and a review of the newly acquired NTIS printing and duplicating facility. The discussion on the NTIS Joint Ventures program scheduled to begin at 1:30 p.m. and ending at 4:30 p.m. on December 14, 1992, will be closed as it is likely to disclose confidential financial and planning information provided to NTIS by its joint venture partners. The NTIS Advisory Board was established by statute (Pub. L. 100-519) on October 24, 1988, and received its charter on September 15, 1989.

DATES: The meeting will convene December 14, 1992, at 9 a.m. and will adjourn at 4 p.m. on December 15, 1992. A closed session is scheduled on December 14, 1992, beginning at 1:30 p.m. and adjourning at 4:30 p.m.

ADDRESSES: The meeting will be held in room 2029A, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

PUBLIC PARTICIPATION: The meeting will be open to public participation. Approximately thirty minutes each day will be set aside for oral comments or questions as indicated in the agenda. Seats will be available for the public and for the media. Seats will be available on a first-come, first-served basis. Any member of the public may submit written comments concerning the Board's affairs at any time before and after the meeting. Copies of the minutes of the meeting will be available within thirty days from the address given below.

FOR FURTHER INFORMATION CONTACT:
Dorothy A. Aukofer, NTIS Advisory Board Executive Secretary, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Telephone: (703) 487-4778; by fax (703) 487-4009.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on November 23, 1991 that the portion of the meeting of the NTIS Advisory Board that involves discussion of NTIS joint ventures be closed to the public in order to prevent the disclosure of confidential commercial or financial information provided to NTIS by its joint venture partners in accordance with section 552b(c)(9)(B) of title 5, United States Code.

Dated: November 24, 1992.

Ronald Lawson,

Associate Director for Financial Management.

[FR Doc. 92-29253 Filed 12-1-92; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

[OMB Control No. 9000-0038]

Clearance Request for Mistake in Bid

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0038).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Mistake in Bid.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:**A. Purpose**

When a mistake in bid is discovered by the contracting officer (CO) after bid opening but before award, the CO obtains verification of the bid intended. This verification is needed to establish the bidder's correct bid. If the bidder requests permission to correct the bid, the bidder must submit clear and convincing evidence that a mistake was made. If the bidder requests permission to correct the bid and submits evidence that a mistake was made, the evidence is analyzed by the CO to determine whether or not the bidder should be allowed to correct the bid. The data (evidence) submitted by the bidder is attached to bidder's bid and placed in the contract file along with the CO's determination.

The verification of the correct bid is attached to the original bid and a copy of the verification is attached to the duplicate bid and placed in the contract file.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 4,673; responses per respondent, 1; total annual responses, 4,673; preparation hours per response, .5; and total response burden hours, 2,337.

OBTAINING COPIES OF PROPOSALS:

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0038, Mistake in Bid, in all correspondence.

Dated: November 20, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92-29200 Filed 12-1-92; 8:45 am]

BILLING CODE 6820-34-M

[OMB Control No. 9000-0039]**Clearance Request for Descriptive Literature**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0039).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Descriptive Literature.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:**A. Purpose**

"Descriptive literature" means information which shows the characteristics or construction of a product or explains its operation. It is furnished by bidders as a part of their bids to describe the products offered. Bidders are not required to furnish descriptive literature unless the contracting office needs it to determine before award whether the products offered meet the specification and to establish exactly what the bidder proposes to furnish.

The contracting officer evaluates the information received to determine the acceptability of the product in conforming to specification and solicitation requirements, e.g., design, materials, components, and performance characteristics.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 2,663; responses per respondent, 3; total annual responses, 7,989; preparation hours per response, 167; and total response burden hours, 1,334.

OBTAINING COPIES OF PROPOSALS:

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0039, Descriptive Literature, in all correspondence.

Dated: November 20, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92-29201 Filed 12-1-92; 8:45 am]

BILLING CODE 6820-34-M

[OMB Control No. 9000-0040]**Clearance Request for Bid Sample Disposition Instructions**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0040).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Bid Sample Disposition Instructions.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:**A. Purpose**

Firms submitting bids for Government contracts are occasionally required to submit samples of the product offered to show the characteristics of the item. When bid samples are required, bidders are requested to provide instructions for disposition of the samples after the Government has had a chance to inspect them. If no instructions are received, the samples are returned, collect to the bidder.

The information is used by the contracting office to dispose of the bid samples in the manner requested by the submitting firm.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 2,663; responses per respondent, 3; total annual responses, 7,989; preparation hours per response, 167; and total response burden hours, 1,334.

OBTAINING COPIES OF PROPOSALS:

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0040, Bid Sample Disposition Instructions, in all correspondence.

Dated: November 20, 1992.

Beverly Fayson,
FAR Secretariat.

[FR Doc. 92-29202 Filed 12-1-92; 8:45 am]

BILLING CODE 6820-34-M

[OMB Control No. 9000-0044]

Clearance Request for Bid/Offer Acceptance Period

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0044).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Bid/Offer Acceptance Period.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:**A. Purpose**

Bid acceptance period is the period of time from receipt of bids that is available to the Government to award the contract. This acceptance period is normally established by the Government. However, the bidder may establish a longer acceptance period than the minimum acceptance period set by the Government by filling in the blank. There are instances when the Government is unable to award a contract within the acceptance period due to unforeseen complications. Rather than incur the costly expense of

readvertising, the Government requests the bidders to extend their bids for a longer period of time.

These data are placed with the respective bids and placed in the contract file to become a matter of record.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 3,220; responses per respondent, 40; total annual responses, 128,800; preparation hours per response, 017 and total response burden hours, 2,190.

OBTAINING COPIES OF PROPOSALS:

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0044, Bid/Offer Acceptance Period, in all correspondence.

Dated: November 20, 1992.

Beverly Fayson,
FAR Secretariat.

[FR Doc. 92-29203 Filed 12-1-92; 8:45 am]

BILLING CODE 6820-34-M

Office of the Secretary**Availability of Change 3 to DoD 5025.1-I, "DoD Directives System Annual Index"**

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This document is to inform the public and Government Agencies of the availability of Change 3 to DoD 5025.1-I, "DoD Directives System Annual Index," dated January 1992. It is available, at cost, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone (703) 487-4650. The NTIS accession number for Change 3 to the Index is PB92-959538.

FOR FURTHER INFORMATION CONTACT: Ms. P. Toppings, Directives Division, Correspondence and Directives Directorate, Washington Headquarters Services, Washington, DC 20301-1155, telephone (202) 697-4111.

Dated: November 25, 1992.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-29191 Filed 12-1-92; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP92-102-000]

Kentucky West Virginia Gas Co.; Informal Settlement Conference

November 25, 1992.

Take notice that an informal settlement conference will be convened in this proceeding on Tuesday, December 8, 1992 at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined in 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact Joan Dreskin at (202) 208-0738 or James A. Pederson at (202) 208-2158.

Lois D. Cashell,
Secretary.

[FR Doc. 92-29165 Filed 12-1-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-75-000]

Sunrise Energy Co. v. Transwestern Pipeline Co. Complaint

November 25, 1992

Take notice that on November 23, 1992, Sunrise Energy Company (Sunrise), 8150 North Central Expressway, suite 645, Dallas, Texas 75206, filed in Docket No. CP93-75-000, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206), a complaint against Transwestern Pipeline Company (Transwestern) alleging violations of the Natural Gas Act (NGA), and Parts 161 and 284 of the Commission's Regulations, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

Sunrise, a Texas corporation with its principal places of business in Houston and Dallas, Texas, is an independent gas marketer which has supplied gas to non-utility and other customers in California since 1986.

Transwestern, a Delaware corporation with its principal place of business in Houston, Texas, and a wholly owned subsidiary of Enron Corporation (Enron), a Delaware corporation, is a

major interstate pipeline serving the California market and, since March 1992, as stated by Sunrise, has purported to provide firm transportation service to Sunrise.

Sunrise alleges that Transwestern, by misrepresenting the availability of interruptible transportation and the necessity for long-term firm transportation at the receipt points requested by Sunrise, induced Sunrise to subscribe to firm capacity on Transwestern's San Juan expansion. Thereafter, according to Sunrise, Transwestern acquired an intimate working knowledge of Sunrise's firm transportation agreements and conveyed confidential commercial information about Sunrise to Transwestern's marketing affiliate, Enron Gas Marketing, Inc. (Enron Marketing). Sunrise also believes that Transwestern used this knowledge and information to grant various transportation preferences to Enron Marketing thereby putting Sunrise at a severe competitive disadvantage. Sunrise alleges further that Transwestern has treated it in a discriminatory manner and has engaged in systematic practices to remove Sunrise as a long-term competitor in the California market.

Sunrise seeks orders from the Commission requiring Transwestern to pay refunds, retroactive to March 1, 1992, for the difference between the transportation discounts provided to any other shipper and the actual transportation rate charged to Sunrise by Transwestern during this period, inclusive of all receipt points in Sunrise's firm transportation agreements which provide for transportation to California. Sunrise also requests that the Commission initiate a formal investigation directing Transwestern to show cause why it should not be ordered to cease transportation transactions with Enron Marketing.

Any person desiring to be heard or to make any protest with reference to said complaint should, on or before December 7, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR (385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Respondent's

answer to the complaint shall be due on or before December 7, 1992.

Lois D. Cashell,
Secretary.

[FR Doc. 92-29223 Filed 12-1-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-31-000]

**Transcontinental Gas Pipe Line Corp.,
Motion for Waivers and Request for
Interim Authority**

November 25, 1992.

Take notice that on November 19, 1992, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing a request for waiver of § 284.223(f) of the Commission's regulations and for authorization to waive certain provisions of its FERC Gas Tariff to the extent necessary to enable TGPL to convert certain firm transportation agreements with EnMark Gas Corp. (EnMark) from service authorized under section 311 of the Natural Gas Policy Act of 1978 (NGPA) and subpart B of part 284 of the regulations to service under TGPL's blanket transportation certificate under section 7(c) of the Natural Gas Act (NGA) and subpart G of part 284.

TGPL seeks to convert the FT Agreements at the request of EnMark, which claims it cannot currently fully utilize its firm capacity by accessing other market, unless the Commission permits it to amend its FT Agreement to enable TGPL to provide service under subpart G of part 284. TGPL requests a waiver of the requirement that the conversion occur prior to November 1, 1990, if the shipper is to retain its same queue position. TGPL also requests a waiver of section 8.1 of Rate Schedule FT of its tariff which requires TGPL to announce any new firm transportation capacity which comes available and to hold an open season for such capacity, so that the change in the authority under which EnMark receives transportation service may be accomplished without causing EnMark to lose its firm transportation rights under the FT Agreements.

TGPL asserts that EnMark currently has no market for its gas on the systems of Union Gas Company or Penn Gas & Water Company, EnMark former "on behalf of" parties. TGPL states that it has declined to schedule transportation under EnMark's FT Agreement for November utilizing an "on behalf of" entity other than Union Gas Company or Penn Gas & Water Company under the respective FT Agreements, and that EnMark is incurring reservation charges for FT service it cannot fully utilize. In

order to continue to transport gas for EnMark, TGPL requests that the Commission expeditiously grant it interim authority continue to transport for EnMark under either subpart B or subpart G of part 284.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,
Secretary.

[FR Doc. 92-29222 Filed 12-1-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-119-NG]

**Multi-Energies Inc.; Order Granting
Blanket Authorization To Import and
Export Natural Gas, Including
Liquefied Natural Gas, From and to
Canada, Mexico and Other Countries**

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an Order granting Multi-Energies Inc. blanket authorization to import and/or export a combined total of up to 200 Bcf of natural gas, including liquefied natural gas, from and to Canada, Mexico and other countries, over a two-year term beginning on the date of the first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 24, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-29249 Filed 12-1-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-122-NG]

National Steel Corp.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting National Steel Corporation (National Steel) a blanket authorization to import up to 125 Bcf of natural gas from Canada and export up to 75 Bcf of natural gas to Canada over a two-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 24, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-29250 Filed 12-1-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-124-NG]

Santana Resources, Limited; Order Granting Blanket Authorization To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Santana Resources, Limited (Santana) a blanket authorization to export up to 200 Bcf of natural gas to Mexico over a two-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and

4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 24, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-29251 Filed 12-1-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-116-NG]

Tristar Gas Marketing Co.; Order Granting Blanket Authorization To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Tristar Gas Marketing Company blanket authorization to import up to 72 Bcf of natural gas from Canada and to export up to 72 Bcf of natural gas to Mexico over a two-year term, beginning on the date of first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 24, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-29252 Filed 12-1-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4541-5]

Environmental Requirements for Local Governments Policy Dialogue Advisory Committee; Open Meeting

AGENCY: Office of U.S. Environmental Protection Agency, Regional Operations and State/Local Relations.

SUMMARY: The Advisory Committee was established on November 18, 1992, to advise the Administrator on matters pertinent to local government implementation of environmental regulations. EPA gave notice of the establishment of the Advisory Committee in a *Federal Register* notice published Wednesday, November 18, 1992, 57 FR 54393.

TIME AND PLACE: December 17 from 10 a.m. to 5 p.m., and December 18 from 9 a.m. to 4 p.m., with a lunch break both days. The meetings will take place at the American Public Power Association, 2301 M Street, NW., Third floor conference rooms, Washington, DC 20037.

PURPOSE AND INTENDED OUTCOME: The purpose of this meeting is to continue discussions with local and state officials, public interest groups and environmental groups regarding problems local governments and small communities face implementing environmental regulations. Participants will meet in workgroups and plenary to discuss issues of regulatory flexibility, intergovernmental coordination, priority-setting, and data and information on the costs and benefits of environmental regulation. The intended outcome is a set of problem statements regarding these issues. Agendas will be available at the meetings.

PUBLIC PARTICIPATION: This is an open meeting and all interested parties are invited to attend. Seating for observers is limited and will be available on a first-come, first-served basis. Observers may participate any time during the meetings upon recognition by the facilitator or chair.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Kerestes, Special Assistant to the Associate Administrator for Regional Operations and State/Local Relations at the Office of Regional Operations and State/Local Relations, (202) 260-3870. Meeting minutes can also be obtained by requesting them in writing from Mr. Kerestes at U.S. EPA, H-1501, 401 M Street, SW., Washington, DC 20460.

Dated: November 24, 1992.

Laurie D. Goodman,

Associate Administrator, Office of Regional Operations and State/Local Relations.

[FR Doc. 92-29237 Filed 12-1-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4179-5]

National Study of Chemical Residues In Fish; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the final report for EPA's National Study of Chemical Residues in Fish. This report was prepared by the Office of Science and Technology, Standards and Applied Science Division.

DATES: The report is available from EPA to the extent that limited copies last. As of November 23, 1992, the report can be obtained from the National Technical Information Services (NTIS).

ADDRESSES: To obtain a copy of the report, interested parties should submit a written request to the Office of Water Resource Center (RC-4100), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Please provide your name, mailing address, and the EPA document numbers, EPA 823-R-92-008A (Vol. 1) and EPA 823-R-92-008B (Vol. 2). Copies of the report may be purchased from NTIS by writing to the following address: 5285 Port Royal Road, Springfield, VA 22161, Telephone (703) 487-4650. Requests for the study from NTIS should include the NTIS reference numbers, PB-93-114981 (Vol. 1) and PB93-114999 (Vol. 2).

FOR FURTHER INFORMATION CONTACT: Richard Healy, WH-585, U.S. Environmental Protection Agency, Standards and Applied Science Division, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260-7812.

SUPPLEMENTARY INFORMATION: The National Study of Chemical Residues in Fish was a one-time screening investigation to determine the prevalence, concentration, and sources of selected bioaccumulative pollutants in fish, which may not be detected in routine water monitoring. In addition, estimates were made of human health risks for those pollutants studied for which cancer potency factors and/or reference doses have been established. This study was initiated in 1986 as an outgrowth of EPA's National Dioxin Study, which revealed dioxin contamination in fish. Concerns that other toxic pollutants may be bioaccumulating in fish was the primary motive for initiating this follow-up study which contains analysis for 60 pollutants including PCBs, dioxins, furans, pesticides/herbicides, mercury, biphenyl, and other organic compounds. The sites sampled included 314 "targeted" sites thought to be contaminated by various point and nonpoint pollutant sources. Targeted sites included pulp and paper mills (using chlorine and non-chlorine bleaching processes), wood preserving operations, certain refineries, Superfund sites, publicly-owned treatment works (POTWs), sites near industrial complexes, and sites that could be contaminated by runoff from urban or agricultural areas. Other sites included 35 background locations and 39 United States Geological Survey National

Stream Quality Accounting Network (NASQAN) sites.

Dated: November 25, 1992.

Tudor Davies,

Director, Office of Science and Technology.
[FR Doc. 92-29239 Filed 12-1-92; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4541-6]

Sapp Battery Company Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122 (g) and (h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended 42 U.S.C. 9601 *et seq.*, the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Sapp Battery Company Site, Cottondale, Florida with Scrap-All, Inc., Athens Auto Wrecking and Quitman Battery Mart. EPA will consider public comments on the proposed settlements for thirty (30) days. EPA may withdraw from or modify the proposed settlements should such comments disclose facts or considerations which indicate the proposed settlements are inappropriate, improper, or inadequate. Copies of the proposed *de minimis* settlements are available from: Ms. Carolyn McCall, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365, (404) 347-5059.

Written comments must be submitted to the person above within 30 days from the date of publication.

Dated: October 21, 1992.

H. Kirk Lucius,

Director, Waste Management Division.

[FR Doc. 92-29238 Filed 12-1-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

November 24, 1992.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy

contractor, Downtown Copy Center, 1990 M Street, NW, suite 640, Washington, DC 20036, (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0204.

Title: Section 90.38(b), Physically Handicapped "Special Eligibility Showing".

Action: Extension of a currently approved collection.

Respondents: Individuals or households.

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 20 responses; 0.33 hours average burden per response; 7 hours total annual burden.

Needs and Uses: Section 90.38(b) provides that persons claiming eligibility in the Special Emergency Radio Service on the basis of being physically handicapped must present a physician's statement indicating that they are handicapped. Submission of this information is necessary to ensure that frequencies reserved for licensing to handicapped individuals are not licensed to non-handicapped persons. The Commission uses the data to ensure eligibility of applicants.

OMB Number: 3060-0223.

Title: Section 90.129(b), Supplemental information to be routinely submitted with applications (Non type-accepted equipment).

Action: Extension of a currently approved collection.

Respondents: State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 100 responses; 0.33 hours average burden per response; 34 hours total annual burden.

Needs and Uses: Practically all radio transmitting equipment used in this country is manufactured to certain technical specifications which enable it to be designated as "type-accepted" by FCC laboratory personnel. Such a designation shows the purchaser that the equipment is capable of performing within certain tolerances that limit the interference potential of the device. For those few applicants

proposing to use transmitting equipment not proven to meet these specifications, a description of the proposed equipment is required. The information is used by FCC engineers to determine the interference potential of the proposed operation.

OMB Number: 3060-0226.

Title: Section 90.135 (d) & (e), Modification of license.

Action: Extension of a currently approved collection.

Respondents: State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 1,656 responses; 166 hours average burden per response; 276 hours total annual burden.

Needs and Uses: These rule paragraphs require licensees who have changed their name, address, number and location of station control points, number of mobile units, interconnection status, and/or sharing status to notify the Commission. This information collection applies only to licensees who elect to inform the Commission by letter of these changes. Licensees may use forms to notify us of these changes. Notification is necessary to maintain an accurate data base that is used by both the Commission, frequency coordinators and the public in corresponding with licensees regarding interference resolution and licensing matters.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92-29162 Filed 12-1-92; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

November 24, 1992.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment

on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0434.

Title: Section 90.19(f)(7), Stolen Vehicle Recovery System Requirements.

Action: Extension of a currently approved collection.

Respondents: Business or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 40 responses; 4 hours average burden per response; 160 hours total annual burden.

Needs and Uses: Section 90.19(f)(7) requires that applicants for stolen vehicle recovery systems perform an analysis for each base station to ensure that the system does not cause interference to Channel 7 television stations. The data is collected by FCC engineers to determine the interference potential of the proposed operation.

OMB Number: 3060-0262.

Title: Section 90.179, Shared use of radio stations.

Action: Extension of a currently approved collection.

Respondents: State or local governments, no profit institutions, and businesses, or other for-profit (including small businesses).

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 1,650 recordkeepers; 0.75 hours average burden per recordkeeper; 1,238 hours total annual burden.

Needs and Uses: Licensees are allowed to share use of their private land mobile radio facilities on a non-profit, cost-shared basis or on a for-profit private carrier basis. If a licensee shares its station on a non-profit, cost shared basis, this shared use must be pursuant to the written agreement. This written agreement must be kept as part of the station records. Regardless of the method of sharing, an up-to-date list of persons who are sharing the station and the basis of their eligibility under Part 90 must be maintained. The list of participants in the sharing agreement is necessary to identify users of the systems should interference problems develop. This information is used by Commission field personnel who investigate interference complaints. A copy of the sharing agreement is required to be retained so Commission personnel can help resolve interference complaints and operational disputes that may arise among the users.

OMB Number: 3060-0260.

Title: Section 90.239(d), Interim provisions for operations of automatic vehicle monitoring (AVM) systems (supplemental showing required).

Action: Extension of a currently approved collection.

Respondents: State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 50 responses; 1.33 hours average burden per response; 67 hours total annual burden.

Needs and Uses: The rule requires that applicants for automatic vehicle monitoring (AVM) systems submit supplemental technical information necessary to evaluate the interference potential of the proposed system. The data is used by FCC engineers to evaluate applications for AVM systems.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92-29163 Filed 12-1-92; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1920]

Petitions for Reconsideration and Clarification and Motion for Stay of Actions in Rule Making Proceedings

November 24, 1992.

Petitions for reconsideration and clarification and motion for stay have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452-1422. Opposition to these petitions and motion must be filed by December 17, 1992. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations. (Arnold and Columbia, CA) (MM Docket No. 90-176, RM Nos. 7053 & 8040).

Number of Petitions Filed: 1.

Subject: Amendment of part 87 of the Commission's Rules to Establish Technical Standards and Licensing Procedures for Aircraft Earth Stations. (PR Docket No. 90-315).

Number of Petitions Filed: 1.

Subject: Amendment of section 73.202(b), Table of allotments, FM Broadcast Stations, (Prineville and Sisters, Oregon) (MM Docket No. 92-3, RM Nos. 7874 & 7958).

Number of Petitions Filed: 1.

Motion for Stay

Subject: Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations. (Arnold and Columbia, CA) (MM Docket No. 90-176, RM Nos. 7053 & 8040).

Number of Motions Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92-29158 Filed 12-1-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

NationsBank Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a

hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 28, 1992.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *NationsBank Corporation*, Charlotte, North Carolina; to acquire Chrysler First Inc., Allentown, Pennsylvania, and thereby engage in consumer and commercial finance (including mortgage and credit card) activities, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Brooke Holdings, Inc.*, Jewell, Kansas, parent of Brooke Corporation, Jewell, Kansas; to engage, through a subsidiary known as Mid Kansas Insurance Agency, Inc., Wichita, Kansas, in insurance activities, pursuant to § 225.25(b)(8)(vi) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 25, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-29195 Filed 12-1-92; 8:45 am]

BILLING CODE 6210-01-F

Lyndon D. Jackson, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 22, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230

South LaSalle Street, Chicago, Illinois 60690:

1. *Lyndon D. Jackson* to acquire 12.81 percent of the voting shares of Monona Bankshares, Inc., Monona, Wisconsin, and thereby indirectly acquire Monona State Bank, Monona, Wisconsin.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Charles R. Celania and Leian Celania* to acquire an additional 3.20 percent, for a total of 4.58 percent; Harold R. Wanke to acquire an additional 4.80 percent, for a total of 9.22 percent; and Otto Baltrusch, Jr. to acquire an additional 3.20 percent, for a total of 11.37 percent, of the voting shares of First Security Bank of Havre, Havre, Montana.

Board of Governors of the Federal Reserve System, November 25, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-29197 Filed 12-1-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90N-0379]

Report on the Safety of Amino Acids and Related Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a report entitled "Report on the Safety of Amino Acids and Related Products." The report was prepared by the Life Sciences Research Office (LSRO) of the Federation of American Societies for Experimental Biology (FASEB).

DATES: The report became publicly available on September 1, 1992.

ADDRESSES: Submit written requests for copies of the report, along with \$40 for each report requested, to the Special Publication Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814. Copies of the report are available for public examination in LSRO/FASEB office (address above) and in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Elizabeth A. Yetley, Center for Food Safety and Applied Nutrition (HFF-201), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4561.

SUPPLEMENTARY INFORMATION: FDA has a contract (223-88-2124) with FASEB concerning the analysis of scientific issues in food and cosmetic safety. The objective of this contract is to provide information to FDA on general and specific issues of scientific fact associated with food and cosmetic safety. In the *Federal Register* of November 26, 1990 (55 FR 49141), FDA announced that it had asked LSRO/FASEB, as a task under the contract, to provide FDA with an up-to-date scientific review of the safety of use of free amino acids. In the same notice, FDA announced that LSRO/FASEB would provide an opportunity for oral presentations at an open meeting on February 4, 1991, and was seeking the submission of scientific data and information bearing on the topic.

FDA is now announcing the availability of a report, based on those findings, entitled "Report on the Safety of Amino Acids and Related Products," which became available to the public on September 1, 1992.

Dated: November 10, 1992.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 92-29216 Filed 12-1-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92P-0387]

Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Land-O-Sun Dairies, Inc., to market test a product designated as "light eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than March 2, 1993.

FOR FURTHER INFORMATION CONTACT:

Shellee A. Davis, Center for Food Safety

and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5112.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Land-O-Sun Dairies, Inc., 2900 Bristol Hwy., Johnson City, TN 37602.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The milkfat content of the product is reduced from 6 percent to 2 percent, (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 118.5-milliliter (4-fluid ounce) serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A, and (3) aspartame is used in place of the optional nutritive carbohydrate sweeteners specified in 21 CFR 131.170(d). The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light eggnog." The name of the food is followed by the statement "sweetened with aspartame." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "60% fewer calories" and "2/3 less fat than eggnog."

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 319,377 liters (337,500 quarts) of the test product. The product will be manufactured at Atlanta Dairies, 777 Memorial Dr. SE., Atlanta, GA 30316; Land-O-Sun Dairies, Inc., Konnarock Rd. Kingsport, TN 37662; Land-O-Sun Dairies, Inc., 2320 Turnpike Rd., Portsmouth, VA 23705; and Land-O-Sun Dairies, Inc., 610 East

State St., O'Fallon, IL 62269, and distributed in Alabama, Florida, Georgia, Illinois, Indiana, Kentucky, Missouri, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia.

While the labeling of the test product complies with FDA's current regulations, the agency proposed in the *Federal Register* of November 27, 1991 (56 FR 60421 and 60478), in response to the Nutrition Labeling and Education Act of 1990, to establish definitions for terms such as "light" or "lite," "reduced calories," "reduced fat," "lowfat," "nonfat," and "fat free," as well as criteria for the use of these terms on food labels. In addition, the agency published two proposals in the *Federal Register* that would: (1) Amend the current regulations pertaining to the content of nutrition information on food labels (56 FR 60366, November 27, 1991) and (2) revise the nutrition labeling format on food labels (57 FR 32058, July 20, 1992). A notice will be published shortly that will state the date after which labels must comply with the final regulations that the agency issues based on these proposals. The test product may need to be reformulated or relabeled to comply with any changes in the food labeling regulations that the agency ultimately adopts. All products, including the test product, introduced into interstate commerce after the effective date of these regulations will have to comply.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than March 2, 1993.

Dated: November 19, 1992.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-29217 Filed 12-1-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92N-0358]

Prescription Drug Amendments of 1992; Letter to Regulated Industry and Other Interested Persons; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a letter to regulated industry and other interested persons. The letter provides information and

guidance on the prescription drug wholesaler provisions of the Prescription Drug Amendments of 1992, which modify certain sections of the Prescription Drug Marketing Act (the PDMA) amendments to the Federal Food, Drug, and Cosmetic Act (the act).

ADDRESSES: Submit written requests for copies of this letter to the CDER Executive Secretariat Staff (HFD-8), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. The letter is available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Margaret O'Rourke, Center for Drug Evaluation and Research (HFD-336), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8107.

SUPPLEMENTARY INFORMATION: The PDMA (Pub. L. 100-293) amended the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*) to regulate certain aspects of the marketing of prescription human drugs. Section 503(e)(2)(A) of the act (21 U.S.C. 353(e)(2)(A)) requires that any person engaged in the wholesale distribution in interstate commerce of prescription drugs in a State must be licensed by the State in accordance with Federal guidelines. FDA published guidelines for State licensing of wholesale prescription drug distributors as a final rule in the *Federal Register* of September 14, 1990 (55 FR 38012).

The PDMA set a deadline of September 15, 1992, for States to license prescription drug wholesalers. However, as of that date, not all States had enacted licensing programs that meet the PDMA requirements. Consequently, in those States, prescription drug wholesalers could be subject to criminal penalties for unlicensed wholesale distribution. To avoid this result, the Prescription Drug Amendments of 1992 (Pub. L. 102-353) established a temporary (2-year) Federal (FDA) registration procedure for wholesale distributors in States that do not have licensing programs that meet the Federal guidelines.

The letter describes the licensing requirement changes under the Prescription Drug Amendments of 1992,

the effective dates and duration of these amendments, temporary registration procedure requirements, and guidance for registration under the temporary program.

The letter does not bind or otherwise obligate or commit FDA to the views expressed therein. In addition, the letter does not create or confer any rights, privileges, or benefits for or on any person.

Dated: November 23, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-29174 Filed 12-1-92; 8:45 am]

BILLING CODE 4160-01-F

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), *Federal Register*, Vol. 57, No. 62, pp. 10910-10911, dated March 31, 1992, is amended to reflect a change within the Medicaid Bureau. The specific change is establishing a Medicaid Special Program Initiatives Staff (MSPIS) reporting directly to the Director of the Medicaid Bureau. MSPIS will serve as the focal point for all HCFA Medicaid activities in the area of maternal and infant health care, children preventive care services, and Acquired Immune Deficiency-infected recipients.

The specific amendments to Part F are described below:

Section FM.20.E.1., Division of Eligibility Policy, is deleted in its entirety. A new Section FM.20.E.4., Division of Eligibility Policy, is added to reflect the remaining Medicaid eligibility activities that include financial and nonfinancial Medicaid eligibility issues. The new functional statement reads as follows:

4. Division of Eligibility Policy (FME5)

- Develops, interprets, and evaluates policies pertaining to all conditions under which recipients are eligible to have their health care services covered under Medicaid, the rights and responsibilities of recipients and applicants, and other special eligibility and technical issues.

- Evaluates the effect of proposed legislation on current eligibility policies and recommends specifications for new or proposed legislation on eligibility.

- Provides consultation regarding State plan amendments and waiver

requests and prepares State plan disapproval actions.

- Prepares specifications for regulations, preprints and manual instructions pertaining to Medicaid eligibility policy.

A new Section FM.20.F., Medicaid Special Program Initiatives Staff, is added to reflect their position as being the focal point for all HCFA Medicaid activities in the area of maternal and infant health care. The new functional statement reads as follows:

F. Medicaid Special Program Initiatives Staff (FM-3)

- Implements Medicaid maternal and infant health initiative and the Early and Periodic Screening, Diagnostic, and Treatment program through coordination of HCFA resources and activities with those of the Public Health Service and other national organizations, monitoring program performance, effective interagency and interprogram liaison, guidance, and technical assistance.

- Serves as HCFA liaison and manager of the Medicaid Maternal and Child Health Technical Advisory Group.

- Assists in developing Medicaid participation in alternative service and delivery methods (e.g., collaboration and pluralistic funding of health care for varied Human Immune Virus/Acquired Immune Deficiency Syndrome-infected Medicaid Recipients) and conducts reconnaissance and analyses to identify emerging and potential problem areas (e.g., financing community substance abuse programs.)

- Provides technical assistance to States, Regional Offices, and other interested groups in all special Medicaid initiatives.

- Evaluates the effect of proposed legislation on sensitive and special Medicaid issues (i.e. EPSDT and AIDS) and recommends new or amended legislation in regard to these special areas.

Dated: November 16, 1992.

Robert A. Streimer,

Associate Administrator for Management.

[FR Doc. 92-29211 Filed 12-1-92; 8:45 am]

BILLING CODE 4120-03-M

Indian Health Service

Research and Demonstration Projects for Indian Health

AGENCY: Indian Health Service, HHS.

ACTION: Notice of single source cooperative agreement with the Aberdeen Area Tribal Chairmen's Health Board (AATCHB).

SUMMARY: The Indian Health Service (IHS) announces the award of a cooperative agreement to the AATCHB for a demonstration project for the prevention of alcohol related developmental disabilities (ARDD). The award is for a three year project period effective September 30, 1992 to September 29, 1995. Funding for the first year of the project is \$290,000.

The cooperative agreement is issued under the authority of the Public Health Service Act, section 301, and is listed under the Catalog of Federal Domestic Assistance number 93.933. This project relates to the Healthy People 2000 objective 14.4 that addresses reduction in the incidence of fetal alcohol syndrome (FAS).

The award funds a unique demonstration project addressing FAS and fetal alcohol effect prevention by developing, training, and implementing Community-based Response Teams (CRTs). The teams will be composed of physicians; tribal elders; tribal Community Health Representatives; IHS Area staff; and other community-based indigenous health workers. The CRTs will: (1) Provide prevention training to Indian communities within the Aberdeen Area IHS that are identified as "at-risk" for ARDD; (2) conduct prevention training targeted at women of child-bearing age; (3) identify and evaluate children suspected of having ARDD; and (4) develop a program model for use in other Indian communities nationwide.

Justification for Single Source

This project has been awarded on a noncompetitive single source basis for the following reasons.

(a) Based on current data, the Northern Plains Region experiences the highest rates of FAS in Indian Country. This project will provide prevention activities to the 19 tribes located within this region.

(b) The most important intervention in the reduction of FAS is community and family outreach through indigenous health workers. This project is unique in that it proposes to bring together community health and tribal resources into CRTs.

(c) The AATCHB is a recent recipient of a grant for the Northern Plains Healthy Start Initiative, funded by the Health Resources and Services Administration. Coordination of the Healthy Start grant and this cooperative agreement by the AATCHB will maximize the effectiveness and efficiency of activities accomplished under both projects.

Use of Cooperative Agreement

A cooperative agreement has been awarded because of anticipated substantial involvement by IHS and other Federal staff in this project. The major areas of substantial program involvement are as follows. The Black Hills Training Center, an IHS facility, will provide technical assistance and support services for the project and will coordinate the training curriculum developed by this project with other FAS prevention activities within the Aberdeen Area. The IHS Aberdeen Area will establish a steering committee to work closely with the AATCHB for on-going assistance and project evaluation. The Centers for Disease Control and IHS Aberdeen Area will provide data, which is generated by a collaborative FAS surveillance system, to assist with project evaluation.

Contacts for Assistance

For program information, contact Dr. Jerry Lyle, Maternal and Child Health Staff, Division of Clinical and Preventive Services, Indian Health Service, 5600 Fishers Lane, room 6A-54, Rockville, Maryland 20857, telephone (301) 443-1948. For grants information, contact Ms. Kay Carpentier, Grants Management Officer, Grants Management Branch, Division of Acquisition and Grants Operations, Indian Health Service, 12300 Twinbrook Parkway, suite 605, Rockville, Maryland 20852, telephone (301) 443-5204.

Dated: November 24, 1992.

Everett R. Rhoades,

Assistant Surgeon General Director.

[FR Doc. 92-29213 Filed 12-1-92; 8:45 am]

BILLING CODE 4160-16-M

Plan for the Completion of the Review of Qualification Standards for Indians in the Excepted Service

AGENCY: Indian Health Service, HHS.

ACTION: Notice of the plan for the completion of the review of qualification standards for Indians in the Excepted Service.

SUMMARY: In accordance with a court order in *Preston v. Heckler*, 734 F.2d 1359 (9th Cir. 1984), the Indian Health Service (IHS) is publishing a final notice of its intention to adopt the United States Office of Personnel Management (USOPM) qualification standards (X-118 standards) for all personnel series not yet covered by excepted service standards published for Indian applicants in the IHS with provision for the use of selective factors and quality ranking factors.

EFFECTIVE DATE: December 2, 1992.

FOR FURTHER INFORMATION CONTACT:

Mrs. Merry Elrod, Division of Self-Determination Services, Office of Tribal Activities, room 6A-05, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1044 (This is not a toll-free number.).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the IHS intends to adopt the USOPM qualification standards (X-118 standards) for all personnel series not yet covered by excepted service standards published for Indian applicants in the IHS with provision for the use of the following selective factors or quality ranking factors:

a. Ability to speak and interpret the language of the Native American population to be served.

b. Knowledge of the culture, customs, and beliefs of the Native American population to be served.

A review of the qualifications standards for Indian employees or applicants for employment in the IHS was required as a result of the decision by the United States Court of Appeals for the Ninth Circuit in *Preston v. Heckler*, 734 F.2d 1359 (9th Cir. 1984). This review has resulted in very few substantive changes in existing USOPM standards. The recommendation that has been incorporated in all the standards is to allow the use of selective factors and quality ranking factors, when appropriate, that pertain to knowledge, skills and abilities relating to Indian language and/or culture. As shown above in a. and b., the only changes that would be made in the remaining series would be this wording. A listing of the completed studies and established excepted service standards for the 316 general schedule occupational series and all the trades and labor series is attached.

Plan for the Completion of the Review of Qualification Standards for Indians in the Excepted Service

Background

On June 7, 1984, the United States Court of Appeals for the Ninth Circuit issued a decision in favor of the plaintiff who had contended that the Secretary of Health and Human Services (HHS) was required by the Indian Preference Act, 25 U.S.C. 472, to adopt separate qualifications for Indian employees and applicants for employment in the IHS. The Court of Appeals agreed with the District Court that the Indian Preference Act "requires the Secretary to adopt standards for evaluating the qualifications of Indians for employment in the Indian Health

Service that are separate and independent from the generally applicable civil service standards," and "give sufficient weight to the unique experience and background of Indians, including their superior knowledge of Indian needs and problems."

The decision required the Department of HHS to establish qualification standards for Indians who apply for jobs in the Excepted Service when they apply for jobs under 5 CFR 213.3116(b)(8) for Indians entitled to Indian preference. Excepted appointments are not subject to the Competitive Service appointment requirements established by the USOPM.

In addition to the above requirements, the Court stated: "If, after giving full weight to the unique experience and background of Indians, as required by statute, the Secretary concludes that the only proper qualifications for a particular position are those that have already been adopted as part of the civil service regulations (his) separate and independent adoption of the same standards would not be unlawful." The Secretary has determined that because the USOPM standards were recommended, no further review is required.

The standards review that has been made over the last several years has resulted in no substantive changes. One recommendation that has been incorporated in all the standards developed is to allow the use of selective factors and quality ranking factors, when appropriate, that pertain to knowledge, skills and abilities relating to Indian language and/or culture.

Studies have been completed and Excepted Service standards have been established for 316 general schedule occupational series and all trades and labor occupations. These standards cover approximately 166 occupational series in the IHS and 12,960 IHS employees. This constitutes 92 percent of the IHS work force. There are approximately 26 series that have not been studied. This includes three student trainee series and 16 series with populations under 50 employees.

Purpose

To adopt, for the remaining USOPM job series, the X-118 qualification standards with selective factors and quality ranking factors, when appropriate, that relate to knowledge, skills and abilities relating to Indian language and/or culture. The qualification standards will apply to Indians appointed to positions under 5 CFR 213.3116(b)(8).

Objectives

To satisfy the requirements by the United States Court of Appeals for the Ninth Circuit in *Preston v. Heckler*, 734 F.2d, 1359 (9th Cir. 1984). To complete the review of the Qualification Standards for Indians in the IHS, the X-118 qualifications standards are to be adopted as Excepted Service standards with provision for the use of the following selective factors or quality ranking factors:

- Ability to speak and interpret the language of the Native American population to be served.
- Knowledge of the culture, customs, and beliefs of the Native American population to be served.

Dated: November 5, 1992.

Everett R. Rhoades,

Assistant Surgeon General, Director.

Completed Studies

Studies completed cover approximately 166 occupational series in IHS and 12,960 IHS employees which constitutes 92 percent of the IHS work force. In all, 316 General Schedule occupational series and all the trades and labor occupations have been reviewed and excepted service standards have been established. There are approximately 26 series not covered. The information below lists the studies completed and the series not covered.

Completed Studies

Social Work (March 1987), 123 employees.
Community Health Nurse (March 1987), (See "Nurse").
Dental Aid/Assistant (March 1987), 419 employees.
Pharmacist (February 1988), 351 employees.
Contract Specialist (March 1988), 111 employees.
Nurse (August 1988), 2,283 employees (including Community Health Nurse).
65 One-Grade Interval Clerical and Administrative Support Series (January 1989), 2,744 employees.
41 One-Grade Interval Technical, Medical, and Program Support Series (November 1989), 1,291 employees (excluding 419 employees in Dental Aid/Assistant Series superseded by this standard).
98 Two-Grade Interval Administrative, Management, and Specialist Series (June 1990), 900 employees.
Trades and Labor Occupations (June 1990), 1,565 employees.
Dental Officer (August 1991), 329 employees.
86 Two-Grade Interval Professional Series (May 1992), 641 employees.
Medical Officer (July 1992), 1034 employees.
Practical Nurse (July 1992), 490 employees.

In addition, a revised Instructions for Users was developed and printed (August 1990).

Series Not Covered

Guards, 61 employees.
General Student Trainee, 38 employees.
Social Science Aid/Technician, 16 employees.
Social Services, 27 employees.

Social Science Student Trainee, 1 employee.
Support Services Administration, 41 employees.
Equal Opportunity Assistant, 4 employees.
Physicians Assistant, 114 employees.
Medical Supply Aid/Technician, 71 employees.
Physical Therapist, 43 employees.
Medical Technologist, 312 employees.
Optometrist, 59 employees.
Speech Pathologist/Audiology Technician, 14 employees.
Podiatrist, 5 employees.
Dental Hygiene, 20 employees.
Sanitarian, 163 employees.
Health Aid/Technician, 70 employees.
General Attorney, 2 employees.
Contact Representative, 8 employees.
Librarian, 3 employees.
Technical Information Services, 1 employee.
Education/Training Technician, 9 employees.
Education/Vocational Training, 3 employees.
Training Instruction, 7 employees.
Public Health Education, 1 employee.
Education Student Trainee, 1 employee.

[FR Doc. 92-29219 Filed 12-1-92; 8:45 am]

BILLING CODE 4160-16-M

National Institutes of Health

Prospective Grant of Exclusive License: Chloroacetyl and Bromoacetyl Modified Peptides for Use as In-Vivo Imaging Agents

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(91) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Number 5,066,716 (SN 07/283,849), entitled "Synthesis Of Chloroacetyl And Bromoacetyl Modified Peptides For The Preparation Of Synthetic Peptide Polymers, Conjugated Peptides and Cyclic Peptides" to Diatech, Inc., of Londonderry, New Hampshire. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. It is anticipated that this license will be limited to the field of use of *in vivo* imaging agents. This prospective exclusive license may be granted unless within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The patent to be licensed describes an improved means of inserting a reactive moiety at a specific position in a synthetic peptide. Previous methods for derivatizing peptides were time-consuming and cumbersome because the reactive moieties had to be added after the initial synthesis step. This new method automatically produces bromoacetyl- and chloroacetyl-modified peptides, which are stable even after the acid hydrolysis step used to de-protect the peptide. These derivatized peptides, when conjugated to a carrier protein, may be useful in a variety of potential commercial applications including potential peptide immunogens, vaccines and therapeutics.

ADDRESSES: Requests for a copy of this patent, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Steven M. Ferguson, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892. Telephone: (301) 496-7735; Facsimile: (301) 402-0220.

Dated: November 13, 1992.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 92-29164 Filed 12-1-92; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Agreement on Social Security Between the United States and Finland; Entry into Force

The Principal Deputy Commissioner of Social Security gives notice that an agreement coordinating the United States (U.S.) and the Finland social security programs entered into force on November 1, 1992. The agreement with Finland, which was signed on June 3, 1991, is similar to U.S. social security agreements already in force with thirteen other countries—Austria, Belgium, Canada, France, Germany, Italy, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Agreements of this type are authorized by section 233 of the Social Security Act.

Like the other agreements, the U.S.-Finnish agreement eliminates dual social security coverage—the situation that exists when a worker from one country works in the other country and is covered under the social security systems of both countries for the same work. When dual coverage occurs, the worker or the worker's employer or both may be required to pay social security contributions to the two countries simultaneously. Under the U.S.-Finnish

agreement, a worker who is sent by an employer in the U.S. to work in Finland for 5 years or less remains covered only by the U.S. system. The agreement includes additional rules that eliminate dual U.S. and Finnish coverage in other work situations.

The agreement also helps eliminate situations where workers suffer a loss of benefit rights because they have divided their careers between the two countries. Under the agreement, workers may qualify for partial U.S. or partial Finnish benefits based on combined (totalized) work credits from both countries.

Individuals who wish to obtain copies of the agreement or want more information about its provisions may write to the Social Security Administration, Office of International Policy, Post Office Box 17741, Baltimore, MD 21235.

Dated: November 19, 1992.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

[FR Doc. 92-29210 Filed 12-1-92; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-030-4210-5; NNMN 86764]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; Recreation and Public Purposes (R&PP) Act Classification.

SUMMARY: The following public land in Dona Ana County, New Mexico has been examined and found suitable for classification for lease or conveyance to the Gadsden Independent School District (ISD) under the provision of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*). The Gadsden ISD proposes to use the land for a middle school:

T. 26 S., R. 3 E., NMMP

Sec. 14, lots 53-58, 75-77.

Containing 22.5 acres, more or less.

DATES: Comments regarding the proposed lease/conveyance or classification must be submitted on or before January 19, 1993.

ADDRESSES: Comments should be sent to the Bureau of Land Management, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT:

Marvin M. James at the address above or at (505) 525-4349.

SUPPLEMENTARY INFORMATION: Lease or conveyance will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this notice in the *Federal Register*, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a middle school. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a middle school.

Dated: November 20, 1992.

Stephanie Hargrove,

Associate.

[FR Doc. 92-29199 Filed 12-1-92; 8:45 am]

BILLING CODE 4310-FB-M

[UT-020-03-4210-04; U-66640]

Notice of Realty Action**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of realty action, Exchange of Public Lands in Box Elder County, Utah.**SUMMARY:** The Bureau of Land Management proposes the exchange of 2,244.08 acres of land in Box Elder County to Howard H. Leach in exchange for 2,275.56 acres. This notice provides a public comment period and segregates the lands described from entry and mining under the public land laws and the United States mining laws.**DATES:** Comments must be received by January 19, 1993.**ADDRESSES:** Comments should be sent to the District Manager, Salt Lake District BLM, 2370 South 2300 West, Salt Lake City, Utah 84119.**FOR FURTHER INFORMATION CONTACT:** Michael L. Barnes, BLM Salt Lake District Office, (801) 977-4300.**SUPPLEMENTARY INFORMATION:** The following described lands have been found suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756, 43 U.S.C. 1716):**Salt Lake Meridian, Utah**

- T. 13 N., R. 9 W.,
Section 3, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
Section 4, All;
Section 5, All;
- T. 14 N., R. 9 W.,
Section 32, W $\frac{1}{2}$ E $\frac{1}{2}$, W $\frac{1}{2}$.

In exchange for the above described lands, the BLM will acquire the following described lands:

Salt Lake Meridian, Utah

- T. 6 N., R. 19 W.,
Section 33, W $\frac{1}{2}$, SE $\frac{1}{4}$;
- T. 12 N., R. 9 W.,
Section 7, All;
- T. 12 N., R. 10 W.,
Section 7, W $\frac{1}{2}$;
Section 17, W $\frac{1}{2}$;
Section 31, N $\frac{1}{2}$;
Section 33, N $\frac{1}{2}$;
- T. 13 N., R. 10 W.,
Section 29, All.

The lands described above are hereby segregated from entry and mining under the public land laws and the United States mining laws. The segregative effect will terminate upon notice in the **Federal Register** or two years from the date of this publication, whichever occurs first.

The offered and selected lands are both grazing lands located in Box Elder County near Snowville, Utah. The exchange will benefit Mr. Leach by consolidating his land holdings into a

manageable economic unit. The Federal Government will benefit by eliminating private inholdings and consolidating existing checkerboard public ownership land patterns. The Government will also gain high resource values in wildlife and recreation on those lands located in T. 6 N., R. 19 W., Salt Lake Meridian.

Terms and conditions applicable to this exchange will include a reservation for all minerals to the United States. A right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, (43 U.S.C. 945).

The public is hereby notified that comments may be submitted to the District Manager at the address shown within the comment period identified above. Any adverse comments will be evaluated by the District Manager who may modify or vacate this realty action and issue a final determination. In the absence of any action by the State Director, this notice of realty action will become the final determination of the Department of Interior.

Deane H. Zeller,
District Manager.

[FR Doc. 92-29152 Filed 12-1-92; 8:45 am]

BILLING CODE 4310-DQ-M

National Park Service**Notice of Intent To Prepare a General Management Plan and Environmental Impact Statement for Carlsbad Caverns National Park, New Mexico**

SUMMARY: The National Park Service will prepare a General Management Plan (GMP) and an Environmental Impact Statement (EIS) for Carlsbad Caverns National Park, Eddy County, New Mexico, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969. Carlsbad Caverns National Park in the Guadalupe Mountains of southeastern New Mexico has been administered by the National Park Service since October 25, 1923. Originally proclaimed a national monument of 720 acres, its status was changed to a national park by Congress on May 14, 1930. Today, the park contains 46,775 acres of rugged mountain and desert terrain of which 33,125 acres are designated wilderness. In addition to Carlsbad Caverns, the park contains Lechuguilla Cave and more than 80 other known caves, several archeological sites, two national historic districts, and 1,100 species of plants and animals. Management of this unit of the National Park System is aimed at preserving all these features and, at the same time, providing facilities and services to promote safe

and enjoyable use of the park by visitors.

The GMP/EIS will be prepared by an interagency and interdisciplinary planning team composed of representatives from the National Park Service in consultation with the State of New Mexico, the Bureau of Land Management, the U.S. Forest Service, Eddy County, and the City of Carlsbad.

The GMP will establish the overall direction for the park for the next 10 to 15 years. It will address cave and surface resource protection, visitor and interpretation programs, public access, facility needs, cave research opportunities, and boundary adjustments, among other topics. The GMP/EIS will examine a range of alternatives for managing the park and assess the environmental impacts of the alternatives.

To assist the planning team in preparing the GMP/EIS, interested and affected government agencies, organizations, and individuals are encouraged to participate throughout the planning process. The planning team will work closely with the Carlsbad Caverns-Guadalupe Mountains Association and other service organizations, businesses, public interest groups, and local news media to keep the public informed throughout the planning process.

A newsletter will be issued in December 1992, that will describe the planning process and opportunities for public input. The newsletter will also discuss planning issues and request opinions and additional information. Once the preliminary alternatives are formulated by the planning team, a second newsletter will be mailed and public meetings held to elicit comment. There will be additional public meetings upon issuance of the draft GMP and EIS.

As part of the scoping process, the public is encouraged to send written comments and suggestions concerning preparation of the GMP/EIS by December 31, 1992, to Park Superintendent Frank Deckert, Carlsbad Caverns National Park, 3225 National Parks Highway, Carlsbad, New Mexico 88220.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Frank Deckert at the above address or call (505) 785-2232.

Dated: November 5, 1992.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 92-29171 Filed 12-1-92; 8:45 am]

BILLING CODE 4310-70-M

Notice of Completion of Inventory of Native American Human Remains and Associated Funerary Objects Held by Lassen Volcanic National Park, Mineral, CA 96063

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of the inventory of human remains held by Lassen Volcanic National Park, Mineral, CA 96063. Representatives of culturally affiliated Indian tribes are advised that the human remains held by Lassen Volcanic National Park will be retained until January 4, 1993, after which they may be repatriated to culturally affiliated groups.

The remains were recovered in 1938 from an Indian burial ground by R. Johnson and Martin near the confluence of Hat Creek and Rising River, California. In 1990 a detailed inventory and assessment of the human remains was compiled by Dr. Robert Jurmain, Department of Anthropology and Cybernetic Systems, San Jose State University. The analysis confirmed the identity of the skeletal materials as Native American. The age of the remains is not indicated in any of the records possessed by the park. Dr. Jurmain indicated that he was confident only that the remains were prehistoric based on his examination. The collection includes four calvaria (skulls), three mandibles (jaw bones), one femur, one tibia and three ribs. They are believed to represent a minimum of four individuals. One of the calvaria had an arrowhead in it when it was discovered; however, the current location of the arrowhead is unknown.

The site from which these remains were removed is reported to have been located near an identified main winter village for the Atsugewi. The burial site's closeness (ca. within a half mile distance) to the winter village indicates they may be culturally affiliated with the Atsugewi, one of eleven modern bands represented by the Pit River Tribal Council, a federally recognized Indian tribe.

Consultation concerning potential repatriation of these human remains has been initiated by park personnel with the Pit River Tribal Council and the State of California Native American Heritage Commission. Representatives of any other Indian tribe believed to be culturally affiliated with the human remains held by the Lassen Volcanic National Park that have not been

consulted should contact Gil Blinn, Lassen Volcanic National Park, Mineral, CA, 96063, (916) 595-4444, before January 4, 1993.

Dated: November 25, 1992.

Francis P. McManamon,
*Departmental Consulting Archeologist, Chief,
Archeological Assistance Division.*

[FR Doc. 92-29172 Filed 12-1-92; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation 337-TA-338]

Certain Bulk Bags and Process for Making Same; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: Trimeg Holdings, Ltd.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on November 23, 1992.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of

this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT:
Ruby J. Dionne, Office of the Secretary,
U.S. International Trade Commission,
Telephone (202) 205-1802.

Issued: November 23, 1992.

By order of the Commission.

Paul R. Bardos,
Acting Secretary.

[FR Doc. 92-29224 Filed 12-1-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-628-631
(Preliminary)]

Certain Cordage Products From Costa Rica, Korea, Mexico, and Portugal

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-628-631 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Costa Rica, the Republic of Korea (Korea), Mexico, and Portugal of certain cordage products,¹ provided for in subheadings 5607.41, 5607.49, 5607.50, 5607.90, 5608.19, 5608.90, and 5609.00 of the Harmonized Tariff Schedule of the United States (HTS), that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by January 11, 1993.

For further information concerning the conducting of these investigations

¹ For purposes of these investigations, the term "certain cordage products" includes twine, rope or cable, and fish netting, constructed from manmade fibers, regardless of the percentage of such fibers, however blended or composed, and however assembled. Such products do not include wire rope, finished fishing nets, raw materials for the production of cordage, or natural fiber cordage.

and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: November 25, 1992.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran (202-205-3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on November 25, 1992, by counsel on behalf of the Cordage Institute, Hingham, MA.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the *Federal Register*. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the *Federal Register*. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations

for 9:30 a.m. on December 16, 1992, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Douglas Corkran (202-205-3177) not later than December 11, 1992, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before December 21, 1992, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: November 27, 1992.

By order of the Commission.

Paul R. Bardos,
Acting Secretary.

[FR Doc. 92-29225 Filed 12-1-92, 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-344]

Certain Cutting Tools for Flexible Plastic Conduit and Components Thereof; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 30, 1992, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Dawn Industries Inc., Dextel Inc., and Duane Robertson, all of 4410 North Washington Street, Denver, Colorado 80216. Supplements to the Complaint dated November 12 and 16, 1992, were filed on November 13 and 17, 1992, respectively. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cutting tools for flexible plastic conduit and components thereof by reason of alleged infringement of claims 1 through 7 of U.S. Letters Patent 4,336,652 and of the single claim of U.S. Letters Patent Des. 266,736, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202-205-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

FOR FURTHER INFORMATION CONTACT: Gabrielle Siman, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-205-2573.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 25, 1992, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain cutting tools for

flexible plastic conduit or components thereof by reason of alleged infringement of claims 1-7 of U.S. Letters Patent 4,336,652 or the single claim of U.S. Letters Patent Des. 266,736, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Dawn Industries, Inc., 4410 North Washington Street, Denver, Colorado 80216.

Dextel Inc., 4410 North Washington Street, Denver, Colorado 80216.

Duane Robertson, 4410 North Washington Street, Denver, Colorado 80216.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

ProMark, Inc., 1065 South 500 West, Bountiful, Utah 84010.

Orbit Underground, d/b/a Orbit Sprinklers, 1065 South 500 West, Bountiful, Utah 84010.

(c) Gabrielle Siman, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401-I, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to

the respondents, to find the facts to be alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: November 27, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-29226 Filed 12-1-92, 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-567 (Final)]

Ferrosilicon From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-567 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of ferrosilicon, provided for in subheadings 7202.21.10, 7202.21.50, 7202.21.75, 7202.21.90, and 7202.29.00 of the Harmonized Tariff Schedule of the United States

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: November 5, 1992.

FOR FURTHER INFORMATION CONTACT: Brad Hudgens (202-205-3189), Office of Investigations, U.S. International Trade Commission, 500 E street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of ferrosilicon from the People's Republic of China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on May 22, 1992, by AIMCOR, Pittsburgh, PA; Alabama Silicon, Inc., Bessemer, AL; American Alloys, Pittsburgh, PA; Globe Metallurgical, Inc., Cleveland, OH; Silicon Metaltech, Inc., Seattle, WA; United Autoworkers of America (locals 523 and 12646); United Steelworkers of America (locals 2528, 3081, and 5171); and Oil, Chemical & Atomic workers (local 389).

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the *Federal Register*. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the *Federal Register*. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on January 8, 1993, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on January 22, 1993, at the U.S. International Trade

Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 15, 1993. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 21, 1993, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is January 15, 1993. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is February 1, 1993; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before February 1, 1993. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: November 23, 1992.

By order of the Commission.
Paul R. Bardos,
Acting Secretary.
 [FR Doc. 92-29227 Filed 12-1-92; 8:45 am]
 BILLING CODE 7020-02-M

[Investigation No. 337-TA-337]

Decision Not To Review an Initial Determination Terminating the Investigation as to One Respondent on the Basis of a Settlement Agreement

In the Matter of Certain Integrated Circuit Telecommunication Chips and Products Containing Same, Including Dialing Apparatus.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) granting a joint motion to terminate the above-captioned investigation as to respondent A&A International Inc. (A&A) on the basis of a settlement agreement.

ADDRESSES: Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone: (202) 205-3096.

Hearing-impaired persons are advised that information on this investigation can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On October 13, 1992, complainant SGS-Thomson Microelectronics Inc. and respondent A&A jointly moved to terminate this investigation as to A&A on the basis of a patent license agreement. The motion was supported by the Commission investigative attorneys.

On October 30, 1992, the presiding ALJ issued an ID (Order No. 93) granting the joint motion. No petitions for reviews of the ID, or agency or public comments were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337),

and Commission interim rule 210.53 (19 CFR 210.53).

Issued: November 23, 1992.

By order of the Commission.

Paul R. Bardos,
Acting Secretary.
 [FR Doc. 92-29228 Filed 12-1-92; 8:45 am]
 BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32172]

Los Angeles County Transportation Commission—Acquisition Exemption—the Atchison, Topeka & Santa Fe Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts from the requirements of 49 U.S.C. 11343, *et seq.*, the purchase by Los Angeles County Transportation Commission of certain rail lines in Los Angeles County (described in the footnote below)¹ owned by The Atchison, Topeka & Santa Fe Railway Company (Santa Fe). The exemption is granted subject to appropriate labor protection. **DATES:** The exemption will be effective on December 2, 1992. Petitions for reopening must be filed by December 22, 1992.

ADDRESSES: Send pleadings referring to Finance Docket No. 32172 to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
- (2) Charles A. Spitulnik, Hopkins & Sutter, Suite 700, 888 16th Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927-5660 (TDD for hearing impaired: (202) 927-5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write, call or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building,

¹ The lines are:

- a. The Pasadena Subdivision between milepost 104.2 and milepost 140.05 at Mission Tower in Los Angeles County;
- b. The San Bernardino Subdivision between milepost 140.05 at Mission Tower and milepost 143.19 in Los Angeles County; and
- c. The Harbor Subdivision between milepost 0.05 at Redondo Junction and milepost 26.36 near Watson, but excluding Van Ness Yard, Malabar Yard, and El Segundo Yard, all in Los Angeles County.

Washington, DC 20423. Telephone: (202) 289-4357. [Assistance for the hearing impaired is available through TDD service (202) 927-5721.]

Decided: November 24, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons and Phillips.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 92-29206 Filed 12-1-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Advisory Committee on the Use of Air in the Belt Entry to Ventilate the Production (Face) Area of Underground Coal Mines and Related Provisions; Final Report

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Advisory committee final report.

SUMMARY: This notice announces the availability of the final report of the Advisory Committee on the Use of Air in the Belt Entry to Ventilate the Production (Face) Area at Underground Coal Mines and Related Provisions (Belt Air Advisory Committee).

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act and sections 101(a) and 102(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), the Secretary of Labor appointed the Belt Air Advisory Committee to make recommendations concerning the conditions under which belt entry air could be safely used in the face areas of underground coal mines. The Belt Air Advisory Committee held six public meetings over a six month period. After reviewing an extensive amount of material and after many hours of deliberation, the committee reached its conclusions and issued its final report to the Secretary of Labor. This report is available to interested members of the public and may be obtained upon request to: Patricia W. Silvey, Office of Standards, Regulations and Variances, room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203; phone (703) 235-1910.

The report contains the following recommendations relative to the use of air in the conveyor belt haulage entry:

1. Belt haulage entries can be safely used as intake air courses to ventilate working places provided additional safety and health conditions are met.
2. One of the additional conditions is the presence within the belt haulage entry of an early warning fire detection system.
3. Miners must be trained in the basic principles of the early warning fire detection system and the actions required in the event of activation of a system alarm. Appropriate personnel responsible for installation, maintenance, operation, and inspection of the system must be trained in their duties. In the special case of the atmospheric monitoring system (AMS) operator, who is the person responsible for monitoring the system and, hence, initiating the fire fighting and evacuation plan, the Mine Safety and Health Administration (MSHA) should assure, by examination of competency, the training and its effectiveness received by that person. At any time there are workers underground in an AMS-equipped mine, there should be a trained operator within sight or sound of the surface control station.
4. In mines using AMS as a condition for using air in the conveyor belt entry to ventilate working places, the minimum velocity in the belt haulage entry should be 50 feet per minute.
5. MSHA should move forward with the development and promulgation of approval schedules for early warning fire detection systems (including smoke sensors). Approval schedules should include performance standards as well as safety standards and should be flexible enough to permit advances in technology.
6. Velocities, both minimum and maximum, should provide air that is capable of maintaining methane and dust levels at the levels specified in the standards. The concentration of respirable dust in a belt conveyor haulageway used to ventilate the working place should not exceed 1.0 mg/m³ at a point just outby the section tailpiece. The concentration of respirable dust at all other outby locations in belt conveyor haulageways should not exceed 2.0 mg/m³. Designated areas should be established at appropriate locations in the belt haulageway for dust measurement and should be identified in the Ventilation Plan.
7. The minimum air velocity in belt haulage entries should be established based on the ability of the air current to

reduce the potential for methane layering.

8. Lifelines should be installed and maintained in primary and alternate escapeways. Tracks and belts can be treated as acceptable lifelines, provided that where track switches and belt transfers exist, provisions are made for clear designation of the escape route.

9. Ventilation of the primary and alternate escapeways should consider the interfaces and interrelationships among all aspects of the mining system (for example, the haulage system, the ventilation system, the production system, etc.). Ventilation systems should be designed and maintained to protect the integrity of the mine atmosphere in the primary intake escapeway. Factors to be considered in this evaluation, on a mine by mine basis, should include the following: Prudent engineering to provide positive pressure differential from the primary escapeway to adjacent entries to the extent feasible and practical; and, planned, evaluated, and practiced use of devices to pressurize the primary escapeway in the event of an emergency that will require the use of the primary escapeway. The alternate escapeway should be designed and maintained to enhance the chances of escape. Without precluding the use of a return entry or the considerations of other factors such as clearance and ground control in the choice of escapeway ventilation, the alternate escapeway should preferably be ventilated with intake air. If the alternate escapeway is in intake air, it need not be on a totally separate and distinct split of intake air although physical separation is mandated. Information submitted for ventilation plan approval should include substantiating data relative to the integrity of the mine atmosphere in the escapeways under normal and pressurized conditions. The methods used to evaluate the escapeway integrity should be based on measured data from the existing system and on experimental data using pressurizing devices. The use of analytical methods (e.g., computer-oriented network analysis of ventilation systems) is strongly advocated.

10. It is the consensus of the Belt Air Advisory Committee that MSHA proceed rapidly to develop regulations for improved fire resistant belting, including new testing and approval schedules. Notwithstanding the provisions of the committee charter, the committee recommends that once available the improved fire resistant belting material should be used in all underground coal mines.

11. In mines using belt air to ventilate working places, the MSHA District

Manager may establish alert and alarm levels for AMS based on the sensor type and sensitivity, sensor spacing, air flow, cross-sectional area and local mining conditions. The alert and alarm levels should not exceed 5 ppm and 10 ppm CO (or equivalent) above ambient, respectively. Alerts and alarms shall be automatically activated on the surface and on the working section when the CO (or equivalent) levels exceed the established levels.

12. In mines using belt air to ventilate working places, increased emphasis should be placed on belt-entry cleanup and conveyor belt maintenance.

Initial review of the final report by MSHA indicates that the Advisory Committee's recommendations may affect the Agency's ventilation, dust, training, and approval regulations. In accordance with section 101(a)(2) of the Federal Mine Safety and Health Act of 1977, MSHA will review the recommendations in the report. After reviewing the report MSHA will proceed with regulatory action.

Dated: November 25, 1992.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 92-29220 Filed 12-1-92; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL SCIENCE FOUNDATION

Permit Issued Under the Antarctic Conservation Act of 1978

November 25, 1992.

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT:

Thomas F. Forhan, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On October 27, 1992 the National Science Foundation published a notice in the *Federal Register* of Permit applications received. A permit was issued to Mark Allen Chappell on November 25 1992.

Thomas F. Forhan,

Permit Office, Division of Polar Programs.

[FR Doc. 92-29168 Filed 12-1-92; 8:45 am]

BILLING CODE 7555-01-M

Permit Issued Under the Antarctic Conservation Act of 1978

November 25, 1992.

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT:

Thomas F. Forhan, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On October 26, 1992 the National Science Foundation published a notice in the *Federal Register* of Permit applications received. A permit was issued to John L. Bengtson on November 25, 1992.

Thomas F. Forhan,

Permit Office, Division of Polar Programs.

[FR Doc. 92-29169 Filed 12-1-92; 8:45 am]

BILLING CODE 7555-01-M

Ocean Sciences Review Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: December 15, 1992; 8:30 a.m. to 5 p.m.

Place: St. James Hotel, rm. 118, 950 24th St. NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Joan R. Mitchell, Science Associate, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-9639.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Experiences for Undergraduates Site proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 25, 1992.

M. Rebecca Winkler,

Committee Management Officer

[FR Doc. 92-29192 Filed 12-1-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Panel for the Decontamination of Three Mile Island, Unit 2, Renewal

The Nuclear Regulatory Commission announces the renewal of the Advisory Panel for the Decontamination of Three Mile Island, Unit 2. It has been determined that renewal of this Advisory Panel is required in order to continue to receive public input and enhance public understanding of the major activities required to decontaminate and safely clean up the damaged facility (Unit 2) at Three Mile Island Nuclear Power Station.

Dated at Rockville, Maryland, this 25th day of November, 1992.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92-29246 Filed 12-1-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-289]

GPU Nuclear Corp., et al.; Environmental Assessment and Finding of No Significant Impact

In the matter of: Metropolitan Edison Co., Jersey Central Power & Light Co., and Pennsylvania Electric Co.

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-50 issued to GPU Nuclear Corporation, et al. (the licensee), for operation of the Three Mile Island Nuclear Station, Unit 1 (TMI-1), located in Dauphin County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment would revise the Technical Specifications relating to fuel enrichment.

The proposed amendment is in accordance with GPU Nuclear Corporation's application dated August 25, 1992.

Need for the Proposed Action

The proposed changes to the Facility Operating License are needed so that the licensee can use more highly enriched fuel, and thereby provide the flexibility of extending the fuel irradiation/burnup to permit longer fuel cycles (i.e., longer continuous periods of operation). Use of the proposed more highly enriched fuels would require the use of fewer fuel

assemblies over the remaining life of the plant.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revision would permit use of fuel enriched with Uranium-235 (U-235) up to 5.0 nominal weight percent (w/o) and would allow fuel burnup to a maximum of 60 gigawatt-days per metric ton of uranium (GWD/MTU). The safety considerations associated with reactor operation using higher fuel enrichment and burnup rates have been evaluated by the NRC staff (the staff). Based on its review, the staff concludes that the proposed changes are acceptable and would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The increased burnup may slightly change the mix of fission products that might be released in the event of a serious accident but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite during normal plant operations. There is also no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that the proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed changes to the Technical Specifications involve components in the plant which are located within the restricted area as defined in 10 CFR part 20. They do not affect nonradiological plant effluents and have no other environmental impacts. Therefore, the staff concludes that there are no significant nonradiological impacts associated with the proposed amendment.

The environmental impacts of transportation resulting from the use of more highly enriched fuel and extended burnup rates have been discussed in the generic staff assessment entitled "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988, and published in the *Federal Register* (53 FR 30355). As indicated therein, the environmental cost contribution of the proposed increase in fuel enrichment and irradiation limits are either unchanged or may in fact be reduced from those summarized in Table S-4 as set forth in 10 CFR 51.52(c).

Therefore, the staff concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the staff concludes that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

The action would involve no use of resources not previously considered in the Final Environmental Statement for the Three Mile Island Nuclear Station dated December 1972.

Agencies and Persons Consulted

The staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment. Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated August 25, 1992, which is available for public inspection in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland this 24th day of November 1992.

For the Nuclear Regulatory Commission,
John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-29244 Filed 12-1-92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste; Meeting

The ACNW Working Group on Performance Assessment (PA) in the

High-Level Waste (HLW) Management Program will hold a meeting on December 16, 1992, room P-110, 7920 Norfolk Avenue, Bethesda, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, December 16, 1992—8:30 a.m.
Until the Conclusion of Business

The purpose of the meeting will be to review the status of the NRC and DOE efforts in total system performance assessment (TSPA) in the HLW management program. Both NRC and DOE participants will be addressing the progress made in their PA efforts in the most recent phases of their respective iterative methodologies for PA. Additionally, the NRC and DOE staffs will address how their research, technical assistance, and data acquisition efforts have led to modification of their PA methodology.

Oral statements may be presented by members of the public with the concurrence of the ACNW Working Group Chairman; written statements will be accepted and made available to the Group. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Working Group, its consultants, and staff. Persons desiring to make oral statements should notify the ACNW staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the ACNW Working Group, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The ACNW Working Group will hear presentations by and hold discussions with the NRC staff and their consultants, National Laboratories, the DOE, DOE consultants, and other interested parties, as appropriate.

Further information regarding the agenda for this meeting, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACNW staff member, Mr. Giorgio Gnugnoli (telephone 301/492-9851) between 8:15 a.m. and 6 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: November 24, 1992.

R.K. Major,

Chief, Nuclear Waste Branch.

[FR Doc. 92-29245 Filed 12-1-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-443]

**North Atlantic Energy Service Corp.,
Seabrook Nuclear Power Station;
Exemption**

I

The North Atlantic Energy Service Corporation (NAESCO) is the holder of Facility Operating License No. NPF-86, which authorizes operation of the Seabrook Station, Unit No. 1 reactor at a steady-state power level not in excess of 3411 megawatts thermal. The facility is a pressurized water reactor located at the licensee's site in Rockingham County, New Hampshire. This license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II

Section VI(4)(d) of appendix E to 10 CFR 50, states that "Each licensee shall complete implementation of the ERDS [Emergency Response Data System] by February 13, 1993, or before initial escalation to full power, whichever comes later."

By letter dated October 28, 1991, the Seabrook licensee requested a schedular exemption from the requirements of section VI(4)(d) of appendix E. The licensee stated that they planned a replacement of the Seabrook Station, Unit 1 computer system during the third refueling outage scheduled to begin March, 1994.

III

In developing the ERDS rule, the NRC staff provided implementation guidance in NUREG-1394, Revision 1. Appendix J (Question 3) indicates that a cost of \$20K to \$50K was envisioned for plants where no new hardware was required. The licensee has indicated that if the exemption is not granted, it would be required to install two different ERDS for the same reactor within one year at an additional cost (above that estimated in NUREG-1394) of as much as \$50K. In addition, software resources (staff) would have to be diverted from the main plant computer changeout to a redundant ERDS installation. This would represent redundant and unnecessary cost. The licensee stated it will install ERDS at the same time it is completing installation of the new main plant computer, and, therefore, will comply with the intent of the regulation.

As indicated in NUREG-1394, Revision 1, Appendix J, the NRC response role in an emergency will not materially change due to the ERDS. The ERDS is for NRC information only. Also,

the ERDS does not change the licensee's emergency procedures or response plan.

For these reasons, we conclude that granting a schedular exemption from appendix E, section VI(4)(d) of 10 CFR 50 will relieve the licensee from unnecessary hardship and redundant costs of installing and testing two ERDS systems within one year, costs significantly in excess of those contemplated when the rule was adopted. Therefore, the licensee's request is granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(iii), are present justifying the exemption.

Accordingly, the Commission hereby grants an exemption as described in Section III above from appendix E, section VI(d)(4) of 10 CFR part 50 to extend the completion date of the ERDS.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of the Exemption will have no significant impact on the environment (57 FR 47126).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland, this 19th day of November 1992.

For The Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects-I/II,
Office of Nuclear Reactor Regulation.

[FR Doc. 92-29247 Filed 12-1-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-423]

**Northeast Nuclear Energy Co., et al.;
Correction to Notice of Consideration
of Issuance of Amendment to Facility
Operating License, Proposed No
Significant Hazards Consideration
Determination, and Opportunity for
Hearing**

In notice document 92-28454 beginning on page 55288, in the issue of Tuesday, November 24, 1992, make the following correction.

In the second column on page 55289, second paragraph beginning "By December 9, 1992, * * *" should be corrected to read "By December 24, 1992, * * *."

Dated at Rockville, Maryland, this 25th day of November 1992.

For the Nuclear Regulatory Commission.

Vernon L. Rooney,

Senior Project Manager, Project Directorate
I-4, Division of Reactor Projects-I/II, Office
of Nuclear Reactor Regulation.

[FR Doc. 92-29248 Filed 12-1-92; 8:45 am]

BILLING CODE 7590-01-M

**NUCLEAR WASTE TECHNICAL
REVIEW BOARD****Meeting of Full Board in Arlington, VA—
January 5-6, 1993**

Pursuant to the Nuclear Waste Technical Review Board's (the Board) authority under section 5051 of the Nuclear Waste Policy Amendments Act (NWPAA) of 1987 (Pub. L. 100-203), the Board will hold its winter meeting January 5-6, 1993, in Arlington, Virginia. The meeting will address three issues, with the major portion devoted to the system implications of interim storage of spent nuclear fuel. The two other topics are the Department of Energy's (DOE) Mission 2001 study, and its Management and Operations (M&O) contractor's development of a "roadmap" of decision-making requirements. The meeting, which is open to the public, will be held at the Key Bridge Marriott, 1401 Lee Highway, Arlington, Virginia 22209; telephone (703) 524-6400.

The Board has invited representatives from the DOE's Office of Civilian Radioactive Waste Management (OCRWM) and its contractors, the Office of the Nuclear Waste Negotiator, the Nuclear Regulatory Commission, the Natural Resources Defense Council, the National Association of Regulatory Utility Commissioners, Edison Electric Institute, the Electric Power Research Institute, and members of the utility industry to make presentations during the meeting. The Board is interested in the system implications of interim storage of spent fuel, including the dimensions of interim storage, federal roles and activities (e.g., the function of the Office of the Nuclear Waste Negotiator), associated issues and their implications, industry initiatives (i.e., the "universal container system" concept), current technologies, and emerging concepts for addressing storage and related waste management needs. The Board also wishes to be updated on the DOE's Mission 2001, in terms of activities being undertaken to meet the goal of license application by 2001. Finally, the Board wishes the M&O contractor to review its development of a "roadmap" of decision-support activities.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 (NWPAA) to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's spent nuclear fuel. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for disposal of that spent fuel.

Transcripts of the meeting will be available on a library-loan basis from Ms. Victoria Reich, Board Librarian, beginning February 17, 1993. For further information, contact Paula N. Alford, Director, External Affairs, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235-4473.

Dated: November 23, 1992.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 92-29150 Filed 12-1-92; 8:45 am]

BILLING CODE 6820-AM-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, January 14, 1993

Thursday, January 28, 1993

Thursday, February 18, 1993

The meetings will start at 10:45 a.m. and will be held in room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor

members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 606-1500.

Dated: November 23, 1992.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 92-29129 Filed 12-1-92; 8:45 am]

BILLING CODE 6325-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

- (1) *Collection title:* Evidence for Application of Overall Minimum.
- (2) *Form(s) submitted:* G-319 and G-320.
- (3) *OMB Number:* 3220-0083.

- (4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.
- (5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
- (6) *Frequency of response:* On Occasion.
- (7) *Respondents:* Individuals or households.
- (8) *Estimated annual number of respondents:* 290.
- (9) *Total annual responses:* 290.
- (10) *Average time per response:* .417 hours.
- (11) *Total annual reporting hours:* 121.
- (12) *Collection description:* Section 3(f)(3) of the Railroad Retirement Act, the total monthly benefits payable to a railroad employee and his family are guaranteed to be no less than the amount which would be payable if the employee's railroad service had been covered by the Social Security Act.

ADDITIONAL INFORMATION OR COMMENTS:

Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 92-29198 Filed 12-1-92; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-19124; International Series Rel. No. 493; 812-7864]

The Latin America Investment Fund, Inc., et al.; Application

November 24, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Latin America Investment Fund, Inc. (the "Investment Fund"), and The Latin America Equity Fund, Inc. (the "Equity Fund").

RELEVANT ACT SECTIONS: Order requested under section 10(f) granting an exemption from that section.

SUMMARY OF APPLICATION: Applicants seek an order that would permit

applicants to purchase securities in public offerings in Mexico in which an affiliate of their sub-adviser participates as a principal underwriter.

FILING DATES: The application was filed on February 2, 1992 and amended on May 26, 1992 and October 28, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 21, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, c/o BEA Associates, One Citicorp Center, 153 E. 53d St., 58th Floor, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, at (202) 272-2190 or Barry D. Miller, Senior Special Counsel, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Applicants are Maryland corporations, registered as non-diversified closed-end investment companies under the Act. The Investment Fund's investment objective is to provide shareholders with long-term capital appreciation primarily through investments in Latin American securities. Under normal market conditions, the Investment Fund will maintain at least 65% of its assets in Latin American debt and equity securities issued by Brazilian, Chilean, and Mexican companies. The Equity Fund's investment objective is long-term capital appreciation achieved by investing primarily in Latin American equity securities. Under normal market conditions, the Equity Fund will have at least 80% of its assets invested in equity securities in Argentina, Brazil, Chile, and Mexico.

2. BEA Associates ("BEA") serves as applicants' investment adviser. BEA has sole investment discretion regarding the Funds' assets except for external debt obligations issued or guaranteed by Latin American governments or governmental entities held in the Investment Fund ("Sovereign Debt"). Salomon Brothers Asset Management Inc. ("Salomon Brothers") acts as the Investment Fund's investment adviser with respect to the Sovereign Debt. Acci Worldwide, S.A. de C.V. ("Acci") serves as each applicant's Mexican sub-adviser pursuant to a sub-advisory agreement between each Fund and BEA (and Salomon Brothers, with respect to the Investment Fund). Subject to the supervision of the Fund's board of directors and BEA (and, in the limited circumstances described above, Salomon Brothers), Acci provides a variety of services to the Funds including: advising applicants regarding the purchase and sale of Mexican securities, providing research and other statistical or factual data, monitoring the execution and settlement of securities transactions, identifying government regulatory requirements applicable to the Funds' activities, and providing other information requested by the Funds.

3. Acci is a wholly-owned subsidiary of Acciones y Valores de Mexico, S.A. de C.V. ("Acciones"). Acciones is one of the oldest and most active brokerage firms in Mexico and plays a significant role as principal underwriter in the Mexican securities markets.

Applicants' Legal Analysis

4. Section 10(f) of the Act provides, in part, that no registered investment company shall knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security a principal underwriter of which is an investment adviser of such registered company, or is a person of which any such investment adviser is an affiliated person. Accordingly, applicants are prohibited under section 10(f) from purchasing securities from an underwriting syndicate in which Acciones participates as a principal underwriter. Applicants request an exemption from section 10(f) to the extent necessary to permit applicants to purchase securities in public offerings in Mexico in which Acciones participates as a principal underwriter, subject to the conditions set forth below.

5. Rule 10f-3 under the Act exempts a transaction from the provisions of section 10(f) if certain conditions are met. Subparagraph (a)(1) of rule 10f-3 requires that the securities purchased be part of an issue registered under the

Securities Act of 1933 (the "Securities Act"). Since the public offerings of Mexican securities in Mexico typically are not registered under the Securities Act, the Funds may be unable to purchase securities in such offerings where Acciones participates as a principal underwriter. Applicants represent, however, that they will be able to satisfy all of the other conditions of rule 10f-3 with regard to public offerings in Mexico. In addition, applicants submit that all securities purchased in Mexico under circumstances subject to section 10(f) of the Act will be purchased in public offerings conducted in accordance with the laws of Mexico from foreign issuers that will have available to prospective purchasers, including the Funds, financial statements, audited in accordance with the laws of Mexico, for at least two years prior to purchase.

6. A public offering of securities may not be lawfully completed in Mexico unless (i) the offering has been submitted to and approved by the Comision Nacional de Valores (the "Mexican Securities Commission") and (ii) the securities are registered in the securities section of the Registro Nacional de Valores e Intermediarios, which is the National Registry of Securities and Securities Brokers (the "Registry"), an agency within the Mexican Securities Commission. In seeking this approval, the issuer must represent that (i) the characteristics of the securities and the terms of the offering are such that the securities will have significant circulation and will cause no dislocation of the market; (ii) the securities possess, or have the potential for, broad circulation in relation to the size of the market or the issuer; and (iii) the issuer is solvent and has liquidity. Although a public offering in Mexico does not need to meet any specific quantitative standards regarding the size of the offering, applicants represent that as a practical matter, the offering must be large enough, in the opinion of the Mexican Securities Commission, to assure investors of the liquidity of the securities. Consequently, the securities must be issued in sufficient quantity to be available to a wide group of offerees.

7. Once the offering price for a security is set, applicants assert that underwriters offer the securities to the public at a public offering price disclosed in the prospectus. The public offering price is fixed and does not change during the offering period. Therefore, affiliated and unaffiliated persons participate in the public offering on the same terms. If a market for the securities already exists,

Mexican law permits the public offering price of the securities to be set at a premium to the current market price, although this situation rarely occurs. The Funds, however, will not purchase securities at a premium to the prevailing market price.

8. Where underwriters make a "firm commitment" in a Mexican public offering, the obligations of the various underwriters are several and not joint. In the underwriting agreement, each underwriter is obligated to purchase shares from the issuer at a fixed price, and the issuer receives proceeds based on this net price regardless of the marketing results of the underwriting group.

9. Applicants assert that the registration requirement of rule 10f-3 was designed to ensure that the investment company will purchase the subject securities at the public offering price (which ordinarily might not exist absent registration) and that the securities were issued more or less in the ordinary course of business. Applicants note that the registration requirement is in the same subparagraph as the requirements that a registered investment company purchase the securities in a firm commitment underwriting, on the first day of the public offering, for no more than the public offering price, indicating that registration is closely related to these requirements.

10. Applicants must submit that adherence to the conditions (as set forth below) will provide an adequate substitute for the registration requirement of rule 10f-3. The nature of a public offering and a firm commitment underwriting in Mexico make it highly likely that a wide group of offerees will take part in the offering and that the securities will be offered to and purchased by affiliated and unaffiliated persons on the same terms. Furthermore, where an issuer's financial statements are available for the last two years, the Funds will be assured of having the basic financial information needed to evaluate the security. Together with the public offering requirement, such statements also provide assurance that the securities were issued in the "ordinary course" of business. It is therefore submitted that exemption from the provisions of section 10(f) in accordance with the conditions set forth herein is consistent with the protection of investors and the purposes intended by the passage of section 10(f) of the Act and the promulgation of rule 10f-3 thereunder.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. All securities purchased in Mexico under circumstances subject to section 10(f) of the Act will be purchased in public offerings conducted in accordance with the laws of Mexico.

2. All subject foreign issuers of securities in which the Funds invest pursuant to the order of exemption will have available to prospective purchasers, including the Fund, financial statements, audited in accordance with Mexican accounting standards, for at least the two years prior to purchase.

3. All purchases made by the Funds pursuant to the order of exemption will comply with all provisions of rule 10f-3 except for the registration requirement set forth in rule 10f-3(a)(1).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 92-29187 Filed 12-1-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19119; File No. 812-8102]

Transamerica Occidental Life Insurance Co., et. al.; Application for Exemption

November 24, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Transamerican Occidental Life Insurance Company ("Transamerica"); Separate Account VA-2NL of Transamerica (the "Account"); and Dreyfus Service Corporation ("Dreyfus").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act for exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of a mortality and expense risk charge from the assets of the Account with respect to certain variable annuity contracts.

FILING DATE: The application was filed on September 23, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request

a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on December 21, 1992 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: Transamerica and the Account, 1150 South Olive, Los Angeles, California 90015; Dreyfus, 200 Park Avenue, New York, New York 10166.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Attorney, or Wendell M. Faria, Deputy Chief, both at (202) 272-2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. Transamerica, a wholly-owned subsidiary of Transamerica Insurance Corporation of California, is a stock life insurance company organized under the laws of California in 1906 and is the depositor of the Account.

2. The Account, a separate account of Transamerica, was established under the laws of California on May 22, 1992 to fund variable annuity contracts (the "Contracts"). The Account will register with the Commission under the 1940 Act as a unit investment trust. The application incorporates by reference the registration statement, currently on file with the Commission (File No. 33-52300), for the Account.

3. The Account has a number of subaccounts (the "Subaccounts") each of which invests solely in a specific corresponding portfolio. The Account will invest in shares of the Dreyfus Life and Annuity Index Fund, Inc. (the "Index Fund") or one or more of the investment portfolios of the Dreyfus Variable Investment Fund (the "Variable Fund"). Additionally, other portfolios or funds managed or distributed by Dreyfus or by an affiliate may be available.

4. The Variable Fund, an unincorporated Massachusetts business trust, is registered under the 1940 Act as an open-end management investment

company of the series type. The Index Fund, incorporated under Maryland law, is registered under the 1940 Act as a non-diversified, open-end management company.

5. Dreyfus, a wholly-owned subsidiary of the Dreyfus Corporation, will be the distributor and the principal underwriter of the Contracts.

6. The Contracts are flexible premium multi-funded deferred individual annuity contracts. The Contracts may be purchased on a non-tax qualified basis or used to fund rollovers to individual retirement annuities qualifying for favorable federal income tax treatment under section 408(b) of the Internal Revenue Code, as amended.

7. The Contracts require a minimum initial purchase payment of \$2,500. Additional premiums of at least \$500 may be paid at any time prior to the Annuity Date. The Contract owner may allocate purchase premiums to one or more of the Subaccounts of the Account.

8. Each Contract contains death benefit provisions. The death benefit proceeds are equal to the greatest of: (a) The Contract Value, or (b) the sum of all premiums, less the sum of all withdrawals and any applicable premium taxes, or (c) the Contract Value on the most recent seven year Contract anniversary preceding the date the death benefit is payable after adjustment for any premiums and withdrawals made since the seven year Contract anniversary. The beneficiary may choose to receive the death benefit in the form of an annuity or in a lump sum cash payment.

9. The Contract owner may select the form of annuity. These forms include: A life annuity; a life and contingent annuity; a life annuity with period certain; and a joint and survivor annuity. Additionally, the Contract owner may elect periodic fixed and/or variable payments under any one of the annuity forms contained in the Contract.

10. To partially compensate Transamerica for administrative services provided to Contract owners, Transamerica will deduct a fee (the "Annual Policy Fee") equal to the lesser of 2% of the Contract Value or \$25. The application states that the amount of the Annual Policy Fee will never exceed \$50. During the accumulation phase of the Contract, the Annual Policy Fee will be deducted at the end of each Contract year and upon surrender of the Contract. After the Annuity Date, a fee of \$30 (the "Annual Annuity Fee") will be deducted in equal installments from each periodic annuity payment under the variable annuity payment option.

11. Transamerica will also deduct a daily charge (the "Administrative

Charge") from the assets of each Subaccount. During the accumulation phase of the Contract, the Administrative Charge will be at an effective annual rate of .10% of the average net assets of the Account, not to exceed .25% of the assets held in each Subaccount. During the annuitization phase of the Contract, when the variable annuity payment option is selected, the Administrative Charge will be at an effective annual rate of .15%, not to exceed .25% of the assets held in each Subaccount.

12. During the accumulation phase of the Contract, four transfers per Contract year are permitted at no charge. For each transfer in excess of four, a fee (the "Transfer Fee") equal to the lesser of 2% of the amount of the transfer or \$10 will be deducted from the amount of the transfer prior to its reallocation. During the annuitization phase of the Contract, no Transfer Fee will be charged.

13. Applicants represent that Transamerica does not anticipate any profit from the Annual Policy Fee, the Annual Annuity Fee, the Administrative Charge or the Transfer Fee (collectively, the "Fees"). Applicants further represent that Transamerica will deduct the Fees in reliance upon the in compliance with Rule 26a-1 under the 1940 Act.

14. Transamerica may incur premium taxes relating to the Contracts. In reliance upon Rule 26a-2 under the 1940 Act, Transamerica will deduct any premium taxes related to a particular Contract from premiums. There are no charges or deductions for sales load from premiums, from Account assets or upon withdrawal or surrender.

15. To compensate it for assuming certain mortality and expense risks under the Contracts and in connection with the Account, Transamerica will deduct a charge at an annual effective rate of .80% of the value of the net assets in the Account, consisting of .30% for mortality risks and .50% for expense risks. Where the variable annuity payout option is selected, the charge during the annuitization phase of the Contract will be 1.25% of the value of the net assets in the Account, consisting of .85% for mortality risks and .40% for expense risks. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks, Transamerica will bear the loss; however, if the charge is more than sufficient to cover costs and risks, the excess will be profit to Transamerica. Transamerica currently anticipates a profit from this charge.

Applicants' Legal Analysis and Conditions

1. Applicants request that the Commission, pursuant to section 6(c) of the 1940 Act, grant the exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act in connection with Applicants' assessment of the daily charge for mortality and expense risks. Sections 26(a)(2)(C) and 27(C)(2) of the 1940 Act, in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

2. The application states that the mortality and expense risk charge compensates Transamerica for the risks that: Annuitants under the Contracts will live longer than was anticipated when the annuity rates guaranteed in the Contracts were set; death benefit proceeds will be greater than the cash surrender value of the Contract; and administrative expenses will be greater than amounts derived from the Fees.

3. Transamerica represents that the charge for mortality and expense risks assumed by Transamerica is within the range of industry practice with respect to comparable annuity products. The application states that this representation is based upon Transamerica's analysis of publicly available information about similar industry products, taking into consideration such factors as: Current charge levels; the existence of charge level guarantees; death benefit guarantees; guaranteed annuity rates and other policy options. Applicants represent that Transamerica will maintain at its principal office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey made by Transamerica.

4. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed as being offset by distribution expenses. The application states that Transamerica has concluded that there is a reasonable likelihood that the proposed

distribution financing arrangements will benefit the Account and Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Transamerica at its administrative offices and will be available to the Commission.

5. Transamerica also represents that the Account will invest only in management investment companies which undertake, in the event any such company adopts a plan under Rule 12b-1 of the 1940 Act to finance distribution expenses, to have such plan formulated and approved by a board of directors or trustees, a majority of the members of which are not "interested persons" of such company within the meaning of section 2(a)(19) of the 1940 Act.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-29188 Filed 12-1-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 92-063]

Intent To Prepare a Draft Environmental Impact Statement

AGENCY: Coast Guard, DOT.

ACTION: Notice of intent.

SUMMARY: The U.S. Coast Guard, as the Federal lead agency and in cooperation with the Chesapeake Bay Bridge Tunnel Commission, intends to prepare and circulate a Draft Environmental Impact Statement (DEIS) for a proposed parallel bridge project crossing the Chesapeake Bay between Virginia Beach and Cape Charles, Virginia. Additionally, a Coast Guard bridge permit is required for approval of the location and plans for the bridge project before construction can begin. The U.S. Army Corps of Engineers will be a cooperating agency and also will have Federal permitting requirements for various aspects of the project.

DATES: Comments must be received on or before January 4, 1993.

ADDRESSES: Comments may be mailed to Commander (oan/ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, or may be delivered to room 109 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (804) 398-6222.

FOR FURTHER INFORMATION CONTACT: Ms. Ann B. Deaton, Chief, Bridge Administration Section, Aids to Navigation Branch, Telephone: (804) 398-6222.

SUPPLEMENTARY INFORMATION: This notice of intent is published as required by regulations of the Council on Environmental Quality in 40 CFR 1501.7.

The proposed project would provide additional lanes to U.S. Route 13 between Chesapeake Beach in Virginia Beach and Cape Charles (Wise Point), Virginia, a distance of 19.5 miles. It would include a series of low-level multiple concrete girder trestles separated by the existing tunnel portal islands, two proposed high-level multiple steel deck girder bridges, and at-grade roadway sections. Clearances for navigation through the proposed structures would equal those provided by the existing bridges. The primary reason for this project is to improve traffic safety and accommodate future highway traffic volumes. Tunnel construction beneath Thimble Shoal and Chesapeake navigation channels has been deferred.

As a result of earlier scoping meetings with Federal and State agencies, the Coast Guard has determined that an EIS would be the appropriate document for assessing impacts of the proposed project. A no-build alternative, alternative alignments within the existing bridge corridor, and various designs will be addressed. Significant issues to be evaluated include impacts on wetlands and water quality, wildlife habitat on Fishermans Island National Wildlife Refuge and Cape Charles/Wise Point (both areas of the Eastern Shore of Virginia National Wildlife Refuge), impacts on Federal and State lists of threatened and endangered species, impacts on existing residential areas, potential changes in land use, and impacts on marine and land traffic.

Comments are invited from all interested parties to assure that all significant issues are identified and the full range of impacts of the proposed bridge project are addressed. Future public scoping meetings will be announced.

Dated: November 23, 1992.

A. Cattalini,

Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 92-29233 Filed 12-1-92; 8:45 am]

BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

Denial of Petition

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended. 15 U.S.C. 1381, 1410a.

The Center for Auto Safety (CAS) submitted a petition dated July 29, 1992, requesting that NHTSA "investigate and recall 1990 and 1991 Isuzu Trooper models, and all other model years with the same fuel line system." The petitioner did not allege a specific defect in the fuel system of the subject vehicles, describing the problem instead as "defects that cause fuel line failure and result in fires." As a basis for the petition, CAS cited reports of engine compartment fires in Troopers equipped with the 2.8L V6 engine. The vehicles subject to the petition ("subject vehicles") are, thus, interpreted as all similarly equipped Isuzu Troopers.

CAS based its petition on three reports of engine compartment fires in the subject vehicles. Two of these reports referenced findings of fuel line failure by fire origin experts. The third report did not allege a cause but was represented by the petitioner as "likely to be fuel line related because of the severity, point of ignition and the speed at which the vehicle became consumed by the fire."

On September 14, 1990, NHTSA received a safety-defect information report from Isuzu Motors Limited (Isuzu) stating that Isuzu would conduct a safety-related defect recall campaign covering 1990 and 1991 Isuzu Trooper models equipped with the subject engine type and automatic transmissions. The campaign, designated by NHTSA as Recall 90V-167, involved 17,048 vehicles. The recall addressed a defect Isuzu had identified in the automatic transmission system which could result in the release of transmission fluid from the oil level gauge (dipstick tube). According to Isuzu, leaking transmission oil could wet the exhaust manifold and, "in the worst case, ignite rubber hoses and the like in the vicinity causing a fire." The transmission oil dipstick tube is located

directly above and to the rear of the fuel lines in the right rear quadrant of the engine compartment of the subject vehicles.

After receipt of the petition, NHTSA reviewed its consumer complaint files and found ten complaints of engine compartment fires in the subject vehicles, including two of the vehicles cited in the petition. Five of the reports were attributed to an automatic transmission fluid problem, one to an oil leak, one to a fuel system defect, and three did not allege a cause. The single complaint alleging fuel system failure involved one of the vehicle fires cited by the petitioner. No additional reports alleging fuel system failure were discovered in the consumer complaint file search.

NHTSA also contacted Isuzu to request information pertaining to the alleged defect. Included in Isuzu's response were five additional reports of engine compartment fire alleging some failure of the fuel supply system. Analysis of these reports, and the three submitted with the petition, found no evidence of a defect trend related to the fuel system. Instead, the seven reports mentioning fuel system involvement were found to allege a variety of failure modes, including abrasion of the fuel line from contact with other engine components, inadequate thread engagement at the throttle body injector inlet connection, heat damage to the fuel lines either from the air pump bypass valve, routing of the fuel lines too close to the exhaust manifold, and unspecified failure of the fuel system. As previously noted, one of the reports submitted with the petition did not identify any failure of the fuel system, but was included simply as another engine compartment fire. These reports, rather than showing evidence of a defect trend, highlight the absence of a common failure mode in the fuel system of the subject vehicles.

The only failure mode identified in more than one allegation was that the fuel line was routed too close to the exhaust manifold, cited in two reports. One of these reports referred to that problem as "the most likely" cause while the second report was based solely on a cursory inspection of an engine compartment by a fire department official. In both cases, the conclusions were based on examination of an engine compartment where extensive fire damage had occurred. The petitioner's contention that these or other fires were "positively identified" as fuel line related is not supported by the facts. The characteristic failure mode of the automatic transmission system, as previously described,

suggests that wetting by transmission oil is another, more likely, cause of engine compartment fires. Both of these reports, as well as some of the remaining six, described circumstances or symptoms consistent with the condition remedied in Recall 90V-167. Specifically, long trips with high engine loads, such as driving in mountainous areas, causes the transmission fluid temperature to rise and increases the potential for fluid expulsion through the transmission filler pipe onto the hot engine. Intermittent trace evidence of smoke from under the hood prior to the actual fire, unaccompanied by engine stalling or hesitation, is also more consistent with a transmission fluid fire than a fuel fed fire. In any event, NHTSA's examination of the fuel supply system in the subject vehicles does not support a finding of either improper routing or mounting of the fuel lines.

It is noteworthy that the only common element identified in the complaints received from the petitioner and Isuzu is that all eight involved vehicles are equipped with automatic transmissions, though almost half of the subject vehicles are equipped with manual transmissions. Since the fuel supply system is the same in all subject vehicles, the absence of such fires in those equipped with manual transmission would not be expected for a defect involving the fuel system. After review of all available information, no evidence of a safety-related defect trend involving the fuel supply system was discovered.

In consideration of the available information it was concluded that there was not a reasonable possibility that an order concerning the notification and remedy of a safety-related defect in relation to the petitioner's allegations would be issued at the conclusion of an investigation. Since no evidence of a safety-related defect trend was discovered, further commitment of resources to determine whether such a trend may exist does not appear to be warranted. Therefore, the petition is hereby denied.

Authority: Sec. 124, Pub. L. 93-492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 25, 1992.

William A. Boehly,
Associate Administrator for Enforcement.
[FR Doc. 92-29167 Filed 12-1-92; 8:45 am]
BILLING CODE 4910-50-M

Saint Lawrence Seaway Development Corporation

Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 11 a.m., December 9, 1992, at the Corporation's Administration Headquarters, room 5424, 400 7th Street, SW., Washington, DC, via conference call. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than December 4, 1992, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202-366-0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on November 24, 1992.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 92-29149 Filed 12-1-92; 8:45 am]

BILLING CODE 4910-61-M

DEPARTMENT OF THE TREASURY

[Number: 15-24]

Authority of Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement)

November 24, 1992.

1. *Delegation.* By virtue of the authority vested in the Assistant Secretary (Enforcement) under Treasury Order (TO) 101-05, I hereby delegate to the Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement) the authority to take final action with respect to any petition for remission, mitigation, or cancellation of any claim (including claim for liquidated damages), fine, or penalty (including forfeiture) incurred or arising under the Tariff Act of 1930, as amended, or any other law to the extent that it is administered by the U.S. Customs Service.

2. *Cancellation.* Treasury Directive 15-24, "Authority of Deputy Assistant

Secretary (Regulatory, Tariff and Trade Enforcement)," dated September 29, 1986, is superseded.

3. *Authority.* TO 101-05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury."

4. *Office of Primary Interest.* Office of the Assistant Secretary (Enforcement).

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92-29166 Filed 12-1-92; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register

Vol. 57, No. 232

Wednesday, December 2, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, December 7, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 27, 1992.

William W. Wiles,
Secretary of the Board.

[FR Doc. 92-29294 Filed 11-30-92; 10:17 am]

BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of November 30, 1992.

A closed meeting will be held on Tuesday, December 1, 1992, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Beese, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, December 1, 1992, at 2:30 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceeding of an enforcement nature.
Settlement of injunctive actions.
Settlement of administrative proceeding of an enforcement nature.
Opinions.

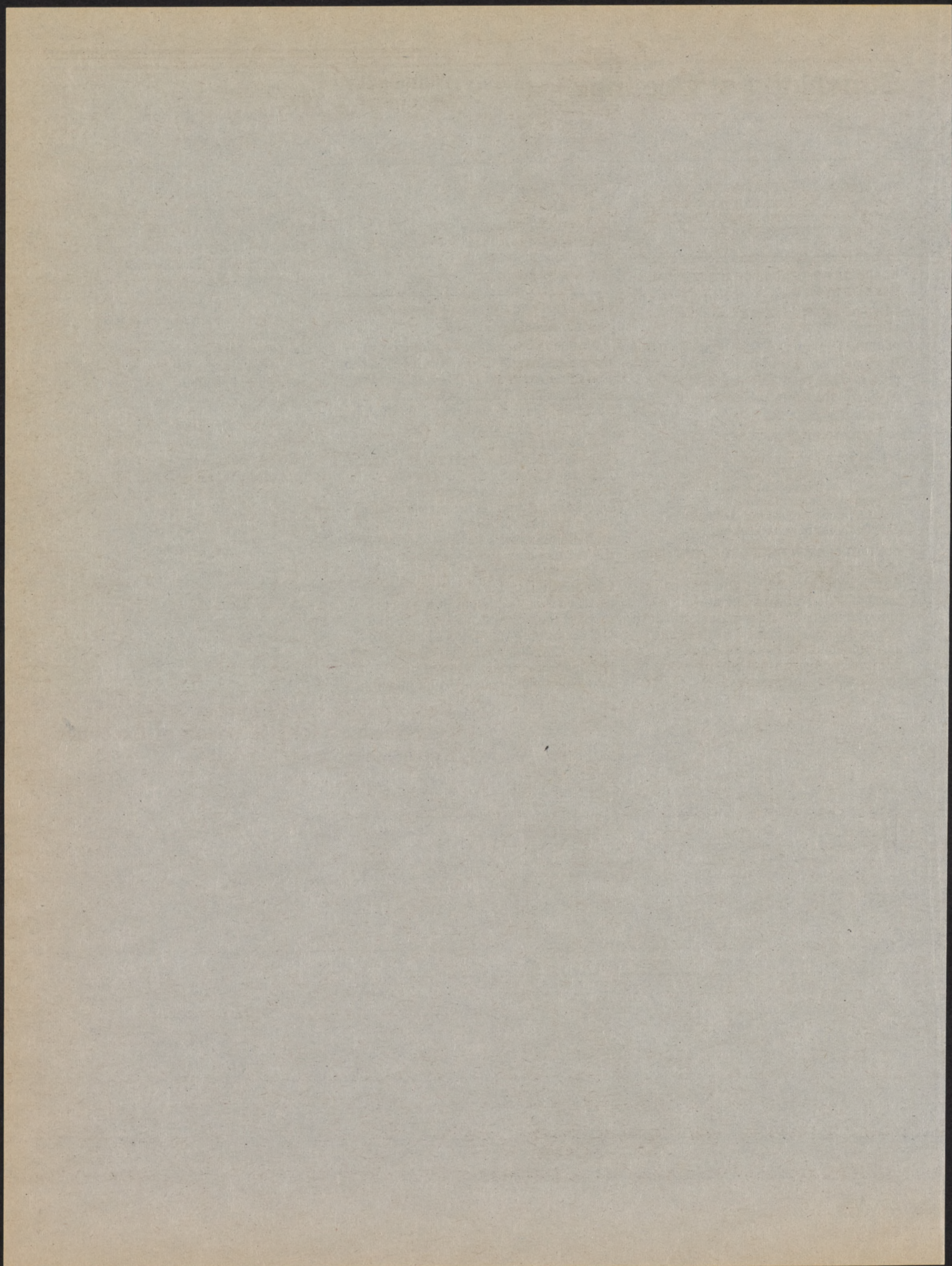
At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Rosenblum at (202) 272-2300.

Dated: November 27, 1992.

Jonathan G. Katz,
Secretary.

[FR Doc. 92-29320 Filed 11-30-92; 12:02 pm]

BILLING CODE 8010-01-M



Executive Order

Wednesday
December 2, 1992

Part II

The President

Memorandum of November 30—
Memorandum for the Heads of Executive
Departments and Agencies

Presidential Documents

Title 3—

The President

Memorandum of November 30, 1992

Memorandum for the Heads of Executive Departments and Agencies

Puerto Rico is a self-governing territory of the United States whose residents have been United States citizens since 1917 and have fought valorously in five wars in the defense of our Nation and the liberty of others.

On July 25, 1952, as a consequence of steps taken by both the United States Government and the people of Puerto Rico voting in a referendum, a new constitution was promulgated establishing the Commonwealth of Puerto Rico. The Commonwealth structure provides for self-government in respect of internal affairs and administration, subject to relevant portions of the Constitution and the laws of the United States. As long as Puerto Rico is a territory, however, the will of its people regarding their political status should be ascertained periodically by means of a general right of referendum or specific referenda sponsored either by the United States Government or the Legislature of Puerto Rico.

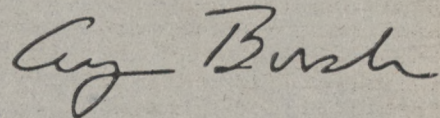
Because Puerto Rico's degree of constitutional self-government, population, and size set it apart from other areas also subject to Federal jurisdiction under Article IV, section 3, clause 2 of the Constitution, I hereby direct all Federal departments, agencies, and officials, to the extent consistent with the Constitution and the laws of the United States, henceforward to treat Puerto Rico administratively as if it were a State, except insofar as doing so with respect to an existing Federal program or activity would increase or decrease Federal receipts or expenditures, or would seriously disrupt the operation of such program or activity. With respect to a Federal program or activity for which no fiscal baseline has been established, this memorandum shall not be construed to require that such program or activity be conducted in a way that increases or decreases Federal receipts or expenditures relative to the level that would obtain if Puerto Rico were treated other than as a State.

If any matters arise involving the fundamentals of Puerto Rico's status, they shall be referred to the Office of the President.

This guidance shall remain in effect until Federal legislation is enacted altering the current status of Puerto Rico in accordance with the freely expressed wishes of the people of Puerto Rico.

The memorandum for the heads of executive departments and agencies on this subject, issued July 25, 1961, is hereby rescinded.

This memorandum shall be published in the Federal Register.



THE WHITE HOUSE,
Washington, November 30, 1992.

Reader Aids

Federal Register

Vol. 57, No. 232

Wednesday, December 2, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-3187
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230
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Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, DECEMBER

56803-56962.....	1
56963-57094.....	2

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Memorandums:	
July 25, 1961	
(Rescinded by	
Memorandum of	
November 30,	
1992).....	57093
November 30, 1992.....	57093

7 CFR

425.....	56963
----------	-------

12 CFR

203.....	56963
1680.....	56968

17 CFR

240.....	56973
----------	-------

17 CFR

Proposed Rules:

240.....	57027
----------	-------

18 CFR

Proposed Rules:

284.....	57031
----------	-------

23 CFR

1204.....	56991
-----------	-------

26 CFR

Proposed Rules:

1.....	57033, 57034
--------	--------------

30 CFR

Proposed Rules:

914.....	57039
----------	-------

33 CFR

165.....	56991
----------	-------

Proposed Rules:

117.....	57039
----------	-------

36 CFR

Proposed Rules:

1222.....	57042
1230.....	57042

38 CFR

3.....	56992
--------	-------

40 CFR

Proposed Rules:

52.....	57045, 57047
---------	--------------

41 CFR

101-2.....	56993
101-17.....	56994

42 CFR

62.....	56994
400.....	56996
401.....	56996
405.....	56996

47 CFR

69.....	56998
73.....	56999
80.....	57000

Proposed Rules:

2.....	57049
73.....	57051

49 CFR

571.....	57000, 57020
----------	--------------

50 CFR

Proposed Rules:

226.....	57051
----------	-------

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the LSA (*List of CFR Sections Affected*), the *Federal Register Index*, or both.

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected. \$21.00 per year

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.

Note to FR Subscribers:
FR Indexes and the LSA (List of CFR Sections Affected) are mailed automatically to regular FR subscribers.



4. Mail To: Superintendent of Documents, Government Printing Office, Washington, DC 20402-9371